



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 154

AS ENACTED

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kandice Adenon

AN ACT relating to Commerce.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS 355.1-101 is amended to read as follows:

2 (1) This chapter shall be known and may be cited as Uniform Commercial Code.

3 (2) This article may be cited as Uniform Commercial Code - General Provisions.

4 SECTION 2. KRS 355.1-102 IS REPEALED AND REENACTED TO READ AS
5 FOLLOWS:

6 This article applies to a transaction to the extent that it is governed by another article
7 of the Uniform Commercial Code.

8 SECTION 3. KRS 355.1-103 IS REPEALED AND REENACTED TO READ AS
9 FOLLOWS:

10 (1) The Uniform Commercial Code shall be liberally construed and applied to
11 promote its underlying purposes and policies, which are:

12 (a) To simplify, clarify, and modernize the law governing commercial
13 transactions;

14 (b) To permit the continued expansion of commercial practices through
15 custom, usage, and agreement of the parties; and

16 (c) To make uniform the law among the various jurisdictions.

17 (2) Unless displaced by the particular provisions of the Uniform Commercial Code,
18 the principles of law and equity, including the law merchant and the law relative
19 to capacity to contract, principal and agent, estoppel, fraud, misrepresentation,
20 duress, coercion, mistake, bankruptcy, and other validating or invalidating cause
21 supplement its provisions.

22 (3) Official comments to the Uniform Commercial Code, as published from time to
23 time by the National Conference of Commissioners on Uniform State Laws,
24 represent the express legislative intent of the General Assembly and shall be used
25 as a guide for interpretation of this chapter, except that if the text and the official

1 comments conflict, the text shall control.

2 Section 4. KRS 355.1-104 is amended to read as follows:

3 The Uniform Commercial Code~~[This chapter]~~ being a general act intended as a unified
4 coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by
5 subsequent legislation if such construction can reasonably be avoided.

6 SECTION 5. KRS 355.1-105 IS REPEALED AND REENACTED TO READ AS
7 FOLLOWS:

8 If any provision or clause of the Uniform Commercial Code or its application to any
9 person or circumstance is held invalid, the invalidity does not affect other provisions or
10 applications of the Uniform Commercial Code which can be given effect without the
11 invalid provision or application, and to this end the provisions of the Uniform
12 Commercial Code are severable.

13 SECTION 6. KRS 355.1-106 IS REPEALED AND REENACTED TO READ AS
14 FOLLOWS:

15 In the Uniform Commercial Code, unless the statutory context otherwise requires:

16 (1) Words in the singular number include the plural, and those in the plural include
17 the singular; and

18 (2) Words of any gender also refer to any other gender.

19 SECTION 7. KRS 355.1-107 IS REPEALED AND REENACTED TO READ AS
20 FOLLOWS:

21 Section headnotes are part of the Uniform Commercial Code.

22 SECTION 8. KRS 355.1-108 IS REPEALED AND REENACTED TO READ AS
23 FOLLOWS:

24 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
25 Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., except that nothing in
26 this chapter modifies, limits, or supersedes Section 7001(c) of that Act or authorizes
27 electronic delivery of any of the notices described in Section 7003(b) of that Act.

1 SECTION 9. KRS 355.1-201 IS REPEALED AND REENACTED TO READ AS
2 FOLLOWS:

3 (1) Unless the context otherwise requires, words or phrases defined in this section, or
4 in the additional definitions contained in other articles of the Uniform
5 Commercial Code that apply to particular articles or parts thereof, have the
6 meanings stated.

7 (2) Subject to definitions contained in other articles of the Uniform Commercial
8 Code that apply to particular articles or parts thereof:

9 (a) "Action," in the sense of a judicial proceeding, includes recoupment,
10 counterclaim, set-off, suit in equity, and any other proceeding in which
11 rights are determined.

12 (b) "Aggrieved party" means a party entitled to pursue a remedy.

13 (c) "Agreement," as distinguished from "contract," means the bargain of the
14 parties in fact, as found in their language or inferred from other
15 circumstances, including course of performance, course of dealing, or
16 usage of trade as provided in Section 17 of this Act.

17 (d) "Bank" means a person engaged in the business of banking and includes a
18 savings bank, savings and loan association, credit union, and trust
19 company.

20 (e) "Bearer" means a person in possession of a negotiable instrument,
21 document of title, or certificated security that is payable to bearer or
22 indorsed in blank.

23 (f) "Bill of lading" means a document evidencing the receipt of goods for
24 shipment issued by a person engaged in the business of transporting or
25 forwarding goods.

26 (g) "Branch" includes a separately incorporated foreign branch of a bank.

27 (h) "Burden of establishing" a fact means the burden of persuading the trier of

fact that the existence of the fact is more probable than its nonexistence.

(i) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this chapter may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(j) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

1. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
2. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the

surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(k) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(l) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(m) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(n) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(o) "Delivery," with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(p) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(q) "Fault" means a default, breach, or wrongful act or omission.

(r) "Fungible goods" means:

1. Goods of which any unit, by nature or usage of trade, is the equivalent

1 of any other like unit; or

2 2. Goods that by agreement are treated as equivalent.

3 (s) "Genuine" means free of forgery or counterfeiting.

4 (t) "Good faith," except as otherwise provided in Article 5 of this chapter,
 5 means honesty in fact and the observance of reasonable commercial
 6 standards of fair dealing.

7 (u) "Holder" means:

8 1. The person in possession of a negotiable instrument that is payable
 9 either to bearer or to an identified person that is the person in
 10 possession; or

11 2. The person in possession of a document of title if the goods are
 12 deliverable either to bearer or to the order of the person in possession.

13 (v) "Insolvency proceeding" includes an assignment for the benefit of creditors
 14 or other proceeding intended to liquidate or rehabilitate the estate of the
 15 person involved.

16 (w) "Insolvent" means:

17 1. Having generally ceased to pay debts in the ordinary course of
 18 business other than as a result of bona fide dispute;

19 2. Being unable to pay debts as they become due; or

20 3. Being insolvent within the meaning of federal bankruptcy law.

21 (x) "Money" means a medium of exchange currently authorized or adopted by
 22 a domestic or foreign government. The term includes a monetary unit of
 23 account established by an intergovernmental organization or by agreement
 24 between two or more countries.

25 (y) "Organization" means a person other than an individual.

26 (z) "Party," as distinguished from "third party," means a person that has
 27 engaged in a transaction or made an agreement subject to the Uniform

1 Commercial Code.

2 (aa) "Person" means an individual, corporation, business trust, estate, trust,
3 partnership, limited liability company, association, joint venture,
4 government, governmental subdivision, agency, or instrumentality, public
5 corporation, or any other legal or commercial entity.

6 (ab) "Present value" means the amount as of a date certain of one or more sums
7 payable in the future, discounted to the date certain by use of either an
8 interest rate specified by the parties if that rate is not manifestly
9 unreasonable at the time the transaction is entered into or, if an interest
10 rate is not so specified, a commercially reasonable rate that takes into
11 account the facts and circumstances at the time the transaction is entered
12 into.

13 (ac) "Purchase" means taking by sale, lease, discount, negotiation, mortgage,
14 pledge, lien, security interest, issue or reissue, gift, or any other voluntary
15 transaction creating an interest in property.

16 (ad) "Purchaser" means a person that takes by purchase.

17 (ae) "Record" means information that is inscribed on a tangible medium or that
18 is stored in an electronic or other medium and is retrievable in perceivable
19 form.

20 (af) "Remedy" means any remedial right to which an aggrieved party is entitled
21 with or without resort to a tribunal.

22 (ag) "Representative" means a person empowered to act for another, including
23 an agent, an officer of a corporation or association, and a trustee, executor,
24 or administrator of an estate.

25 (ah) "Right" includes remedy.

26 (ai) "Security interest" means an interest in personal property or fixtures which
27 secures payment or performance of an obligation. "Security interest"

1 includes any interest of a consignor and a buyer of accounts, chattel paper,
 2 a payment intangible, or a promissory note in a transaction that is subject to
 3 Article 9 of this chapter. "Security interest" does not include the special
 4 property interest of a buyer of goods on identification of those goods to a
 5 contract for sale under KRS 355.2-401, but a buyer may also acquire a
 6 "security interest" by complying with Article 9 of this chapter. Except as
 7 otherwise provided in KRS 355.2-505, the right of a seller or lessor of goods
 8 under Article 2 or 2A of this chapter to retain or acquire possession of the
 9 goods is not a "security interest," but a seller or lessor may also acquire a
 10 "security interest" by complying with Article 9 of this chapter. The
 11 retention or reservation of title by a seller of goods notwithstanding
 12 shipment or delivery to the buyer under KRS 355.2-401 is limited in effect to
 13 a reservation of a "security interest." Whether a transaction in the form of
 14 a lease creates a "security interest" is determined pursuant to Section 11 of
 15 this Act.

16 (aj) "Send" in connection with a writing, record, or notice means:

- 17 1. To deposit in the mail or deliver for transmission by any other usual
 18 means of communication with postage or cost of transmission
 19 provided for and properly addressed and, in the case of an instrument,
 20 to an address specified thereon or otherwise agreed, or if there be
 21 none to any address reasonable under the circumstances; or
- 22 2. In any other way to cause to be received any record or notice within
 23 the time it would have arrived if properly sent.

24 (ak) "Signed" includes using any symbol executed or adopted with present
 25 intention to adopt or accept a writing.

26 (al) "State" means a State of the United States, the District of Columbia, Puerto
 27 Rico, the United States Virgin Islands, or any territory or insular possession

subject to the jurisdiction of the United States.

(am) "Surety" includes a guarantor or other secondary obligor.

(an) "Term" means a portion of an agreement that relates to a particular matter.

(ao) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(ap) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(aq) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

SECTION 10. KRS 355.1-202 IS REPEALED AND REENACTED TO READ
AS FOLLOWS:

(1) Subject to subsection (6) of this section, a person has "notice" of a fact if the person:

(a) Has actual knowledge of it;

(b) Has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(2) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(3) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(4) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(5) Subject to subsection (6) of this section, a person "receives" a notice or notification when:

(a) It comes to that person's attention; or

(b) It is duly delivered in a form reasonable under the circumstances at the

place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(6) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SECTION 11. KRS 355.1-203 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

(1) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(2) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life

1 of the goods for no additional consideration or for nominal additional
 2 consideration upon compliance with the lease agreement; or

3 (d) The lessee has an option to become the owner of the goods for no additional
 4 consideration or for nominal additional consideration upon compliance
 5 with the lease agreement.

6 (3) A transaction in the form of a lease does not create a security interest merely
 7 because:

8 (a) The present value of the consideration the lessee is obligated to pay the
 9 lessor for the right to possession and use of the goods is substantially equal
 10 to or is greater than the fair market value of the goods at the time the lease
 11 is entered into;

12 (b) The lessee assumes risk of loss of the goods;

13 (c) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing,
 14 recording, or registration fees, or service or maintenance costs;

15 (d) The lessee has an option to renew the lease or to become the owner of the
 16 goods;

17 (e) The lessee has an option to renew the lease for a fixed rent that is equal to
 18 or greater than the reasonably predictable fair market rent for the use of the
 19 goods for the term of the renewal at the time the option is to be performed;
 20 or

21 (f) The lessee has an option to become the owner of the goods for a fixed price
 22 that is equal to or greater than the reasonably predictable fair market value
 23 of the goods at the time the option is to be performed.

24 (4) Additional consideration is nominal if it is less than the lessee's reasonably
 25 predictable cost of performing under the lease agreement if the option is not
 26 exercised. Additional consideration is not nominal if:

27 (a) When the option to renew the lease is granted to the lessee, the rent is stated

1 to be the fair market rent for the use of the goods for the term of the
 2 renewal determined at the time the option is to be performed; or

3 **(b) When the option to become the owner of the goods is granted to the lessee,**
 4 **the price is stated to be the fair market value of the goods determined at the**
 5 **time the option is to be performed.**

6 **(5) The "remaining economic life of the goods" and "reasonably predictable" fair**
 7 **market rent, fair market value, or cost of performing under the lease agreement**
 8 **must be determined with reference to the facts and circumstances at the time the**
 9 **transaction is entered into.**

10 SECTION 12. KRS 355.1-204 IS REPEALED AND REENACTED TO READ
 11 AS FOLLOWS:

12 **Except as otherwise provided in Articles 3, 4, and 5 of this chapter, a person gives**
 13 **value for rights if the person acquires them:**

14 **(1) In return for a binding commitment to extend credit or for the extension of**
 15 **immediately available credit, whether or not drawn upon and whether or not a**
 16 **charge-back is provided for in the event of difficulties in collection;**

17 **(2) As security for, or in total or partial satisfaction of, a preexisting claim;**

18 **(3) By accepting delivery under a preexisting contract for purchase; or**

19 **(4) In return for any consideration sufficient to support a simple contract.**

20 SECTION 13. KRS 355.1-205 IS REPEALED AND REENACTED TO READ
 21 AS FOLLOWS:

22 **(1) Whether a time for taking an action required by the Uniform Commercial Code is**
 23 **reasonable depends on the nature, purpose, and circumstances of the action.**

24 **(2) An action is taken seasonably if it is taken at or within the time agreed or, if no**
 25 **time is agreed, at or within a reasonable time.**

26 SECTION 14. KRS 355.1-206 IS REPEALED AND REENACTED TO READ
 27 AS FOLLOWS:

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

SECTION 15. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-301:

(1) This section applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

(2) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law of either this state or such other state or nation shall govern their rights and duties.

(3) In the absence of an agreement effective under subsection (2) of this section, the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of laws principles.

(4) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(a) KRS 355.2-402;

(b) KRS 355.2A-105 and KRS 355.2A-106;

(c) KRS 355.4-102;

(d) KRS 355.4A-507;

(e) KRS 355.5-116;

(f) KRS 355.8-110;

(g) KRS 355.9-301 through 355.9-307.

SECTION 16. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS

1 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-302:

2 (1) Except as otherwise provided in subsection (2) of this section or elsewhere in the
 3 Uniform Commercial Code, the effect of provisions of the Uniform Commercial
 4 Code may be varied by agreement.

5 (2) The obligations of good faith, diligence, reasonableness, and care prescribed by
 6 the Uniform Commercial Code may not be disclaimed by agreement. The parties,
 7 by agreement, may determine the standards by which the performance of those
 8 obligations is to be measured if those standards are not manifestly unreasonable.
 9 Whenever the Uniform Commercial Code requires an action to be taken within a
 10 reasonable time, a time that is not manifestly unreasonable may be fixed by
 11 agreement.

12 (3) The presence in certain provisions of the Uniform Commercial Code of the
 13 phrase "unless otherwise agreed," or words of similar import, does not imply that
 14 the effect of other provisions may not be varied by agreement under this section.

15 SECTION 17. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 16 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-303:

17 (1) A "course of performance" is a sequence of conduct between the parties to a
 18 particular transaction that exists if:

19 (a) The agreement of the parties with respect to the transaction involves
 20 repeated occasions for performance by a party; and

21 (b) The other party, with knowledge of the nature of the performance and
 22 opportunity for objection to it, accepts the performance or acquiesces in it
 23 without objection.

24 (2) A "course of dealing" is a sequence of conduct concerning previous transactions
 25 between the parties to a particular transaction that is fairly to be regarded as
 26 establishing a common basis of understanding for interpreting their expressions
 27 and other conduct.

- 1 (3) A "usage of trade" is any practice or method of dealing having such regularity of
 2 observance in a place, vocation, or trade as to justify an expectation that it will be
 3 observed with respect to the transaction in question. The existence and scope of
 4 such a usage must be proved as facts. If it is established that such a usage is
 5 embodied in a trade code or similar record, the interpretation of the record is a
 6 question of law.
- 7 (4) A course of performance or course of dealing between the parties or usage of
 8 trade in the vocation or trade in which they are engaged or of which they are or
 9 should be aware is relevant in ascertaining the meaning of the parties'
 10 agreement, may give particular meaning to specific terms of the agreement, and
 11 may supplement or qualify the terms of the agreement. A usage of trade
 12 applicable in the place in which part of the performance under the agreement is
 13 to occur may be so utilized as to that part of the performance.
- 14 (5) Except as otherwise provided in subsection (6) of this section, the express terms
 15 of an agreement and any applicable course of performance, course of dealing, or
 16 usage of trade must be construed whenever reasonable as consistent with each
 17 other. If such a construction is unreasonable:
- 18 (a) Express terms prevail over course of performance, course of dealing, and
 19 usage of trade;
- 20 (b) Course of performance prevails over course of dealing and usage of trade;
 21 and
- 22 (c) Course of dealing prevails over usage of trade.
- 23 (6) Subject to KRS 355.2-209 a course of performance is relevant to show a waiver or
 24 modification of any term inconsistent with the course of performance.
- 25 (7) Evidence of a relevant usage of trade offered by one party is not admissible unless
 26 that party has given the other party notice that the court finds sufficient to
 27 prevent unfair surprise to the other party.

1 SECTION 18. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 2 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-304:

3 *Every contract or duty within the Uniform Commercial Code imposes an obligation of*
 4 *good faith in its performance and enforcement.*

5 SECTION 19. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 6 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-305:

7 *(1) The remedies provided by the Uniform Commercial Code must be liberally*
 8 *administered to the end that the aggrieved party may be put in as good a position*
 9 *as if the other party had fully performed but neither consequential or special*
 10 *damages nor penal damages may be had except as specifically provided in the*
 11 *Uniform Commercial Code or by other rule of law.*

12 *(2) Any right or obligation declared by the Uniform Commercial Code is enforceable*
 13 *by action unless the provision declaring it specifies a different and limited effect.*

14 SECTION 20. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 15 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-306:

16 *A claim or right arising out of an alleged breach may be discharged in whole or in part*
 17 *without consideration by agreement of the aggrieved party in an authenticated record.*

18 SECTION 21. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 19 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-307:

20 *A document in due form purporting to be a bill of lading, policy or certificate of*
 21 *insurance, official weigher's or inspector's certificate, consular invoice, or any other*
 22 *document authorized or required by the contract to be issued by a third party is prima*
 23 *facie evidence of its own authenticity and genuineness and of the facts stated in the*
 24 *document by the third party.*

25 SECTION 22. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS
 26 CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-308:

27 *(1) A party that with explicit reservation of rights performs or promises performance*

or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(2) Subsection (1) of this section does not apply to an accord and satisfaction.

SECTION 23. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-309:

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

SECTION 24. A NEW SECTION OF ARTICLE 1 OF KRS CHAPTER 355 IS CREATED TO READ AS FOLLOWS AND TO BE NUMBERED AS KRS 355.1-310:

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Section 25. KRS 355.2-103 is amended to read as follows:

(1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) ~~(Reserved) ["Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.]~~

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

1 (2) Other definitions applying to this article or to specified parts thereof, and the
 2 sections in which they appear are:

- 3 "Acceptance." KRS 355.2-606.
- 4 "Banker's credit." KRS 355.2-325.
- 5 "Between merchants." KRS 355.2-104.
- 6 "Cancellation." KRS 355.2-106 (4).
- 7 "Commercial unit." KRS 355.2-105.
- 8 "Confirmed credit." KRS 355.2-325.
- 9 "Conforming to contract." KRS 355.2-106.
- 10 "Contract for sale." KRS 355.2-106.
- 11 "Cover." KRS 355.2-712.
- 12 "Entrusting." KRS 355.2-403.
- 13 "Financing agency." KRS 355.2-104.
- 14 "Future goods." KRS 355.2-105.
- 15 "Goods." KRS 355.2-105.
- 16 "Identification." KRS 355.2-501.
- 17 "Installment contract." KRS 355.2-612.
- 18 "Letter of credit." KRS 355.2-325.
- 19 "Lot." KRS 355.2-105.
- 20 "Merchant." KRS 355.2-104.
- 21 "Overseas." KRS 355.2-323.
- 22 "Person in position of seller." KRS 355.2-707.
- 23 "Present sale." KRS 355.2-106.
- 24 "Sale." KRS 355.2-106.
- 25 "Sale on approval." KRS 355.2-326.
- 26 "Sale or return." KRS 355.2-326.
- 27 "Termination." KRS 355.2-106.

1 (3) The following definitions in other articles apply to this article:

2 "Check." KRS 355.3-104.

3 "Consignee." KRS 355.7-102.

4 "Consignor." KRS 355.7-102.

5 "Consumer goods." KRS 355.9-102.

6 "Dishonor." KRS 355.3-502.

7 "Draft." KRS 355.3-104.

8 (4) In addition Article 1 contains general definitions and principles of construction and
9 interpretation applicable throughout this article.

10 Section 26. KRS 355.2-202 is amended to read as follows:

11 Terms with respect to which the confirmatory memoranda of the parties agree or which
12 are otherwise set forth in a writing intended by the parties as a final expression of their
13 agreement with respect to such terms as are included therein may not be contradicted by
14 evidence of any prior agreement or of a contemporaneous oral agreement but may be
15 explained or supplemented

16 (a) by course of performance, course of dealing, or usage of trade (Section 17 of
17 this Act~~[KRS 355.1-205]~~ or by ~~course of performance (KRS 355.2-208)~~); and

18 (b) by evidence of consistent additional terms unless the court finds the writing to
19 have been intended also as a complete and exclusive statement of the terms of
20 the agreement.

21 Section 27. KRS 355.2A-103 is amended to read as follows:

22 (1) In this article unless the context otherwise requires:

23 (a) "Buyer in ordinary course of business" means a person who in good faith and
24 without knowledge that the sale to him is in violation of the ownership rights
25 or security interest or leasehold interest of a third party in the goods, buys in
26 ordinary course from a person in the business of selling goods of that kind but
27 does not include a pawnbroker. "Buying" may be for cash or by exchange of

1 other property or on secured or unsecured credit and includes receiving goods
 2 or documents of title under a pre-existing contract for sale but does not
 3 include a transfer in bulk or as security for or in total or partial satisfaction of
 4 a money debt.

5 (b) "Cancellation" occurs when either party puts an end to the lease contract for
 6 default by the other party.

7 (c) "Commercial unit" means such a unit of goods as by commercial usage is a
 8 single whole for purposes of lease and division of which materially impairs its
 9 character or value on the market or in use. A commercial unit may be a single
 10 article, as a machine, or a set of articles, as a suite of furniture or a line of
 11 machinery, or a quantity, as a gross or carload, or any other unit treated in use
 12 or in the relevant market as a single whole.

13 (d) "Conforming" goods or performance under a lease contract means goods or
 14 performance that are in accordance with the obligations under the lease
 15 contract.

16 (e) "Consumer lease" means a lease that a lessor regularly engaged in the business
 17 of leasing or selling makes to a lessee who is an individual and who takes
 18 under the lease primarily for a personal, family, or household purpose.

19 (f) "Fault" means wrongful act, omission, breach, or default.

20 (g) "Finance lease" means a lease with respect to which:

- 21 1. The lessor does not select, manufacture, or supply the goods;
- 22 2. The lessor acquires the goods or the right to possession and use of the
 23 goods in connection with the lease; and
- 24 3. One of the following occurs:
 - 25 a. The lessee receives a copy of the contract by which the lessor
 26 acquired the goods or the right to possession and use of the goods
 27 before signing the lease contract;

- 1 b. The lessee's approval of the contract by which the lessor acquired
2 the goods or the right to possession and use of the goods is a
3 condition to effectiveness of the lease contract;
- 4 c. The lessee, before signing the lease contract, receives an accurate
5 and complete statement designating the promises and warranties,
6 and any disclaimers of warranties, limitations or modifications of
7 remedies, or liquidated damages, including those of a third party,
8 such as the manufacturer of the goods, provided to the lessor by
9 the person supplying the goods in connection with or as part of the
10 contract by which the lessor acquired the goods or the right to
11 possession and use of the goods; or
- 12 d. If the lease is not a consumer lease, the lessor, before the lessee
13 signs the lease contract, informs the lessee in writing (a) of the
14 identity of the person supplying the goods to the lessor, unless the
15 lessee has selected that person and directed the lessor to acquire
16 the goods or the right to possession and use of the goods from that
17 person, (b) that the lessee is entitled under this article to the
18 promises and warranties, including those of any third party,
19 provided to the lessor by the person supplying the goods in
20 connection with or as part of the contract by which the lessor
21 acquired the goods or the right to possession and use of the goods,
22 and (c) that the lessee may communicate with the person supplying
23 the goods to the lessor and receive an accurate and complete
24 statement of those promises and warranties, including any
25 disclaimers and limitations of them or of remedies.
- 26 (h) "Goods" means all things that are movable at the time of identification to the
27 lease contract, or are fixtures (KRS 355.2A-309), but the term does not

1 include money, documents, instruments, accounts, chattel paper, general
2 intangibles, or minerals or the like, including oil and gas, before extraction.
3 The term also includes the unborn young of animals.

4 (i) "Installment lease contract" means a lease contract that authorizes or requires
5 the delivery of goods in separate lots to be separately accepted, even though
6 the lease contract contains a clause "each delivery is a separate lease" or its
7 equivalent.

8 (j) "Lease" means a transfer of the right to possession and use of goods for a term
9 in return for consideration, but a sale, including a sale on approval or a sale or
10 return, or retention or creation of a security interest is not a lease. Unless the
11 context clearly indicates otherwise, the term includes a sublease.

12 (k) "Lease agreement" means the bargain, with respect to the lease, of the lessor
13 and the lessee in fact as found in their language or by implication from other
14 circumstances including course of dealing or usage of trade or course of
15 performance as provided in this article. Unless the context clearly indicates
16 otherwise, the term includes a sublease agreement.

17 (l) "Lease contract" means the total legal obligation that results from the lease
18 agreement as affected by this article and any other applicable rules of law.
19 Unless the context clearly indicates otherwise, the term includes a sublease
20 contract.

21 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease
22 contract.

23 (n) "Lessee" means a person who acquires the right to possession and use of
24 goods under a lease. Unless the context clearly indicates otherwise, the term
25 includes a sublessee.

26 (o) "Lessee in ordinary course of business" means a person who in good faith and
27 without knowledge that the lease to him is in violation of the ownership rights

1 or security interest or leasehold interest of a third party in the goods leases in
2 ordinary course from a person in the business of selling or leasing goods of
3 that kind but does not include a pawnbroker. "Leasing" may be for cash or by
4 exchange of other property or on secured or unsecured credit and includes
5 receiving goods or documents of title under a pre-existing lease contract but
6 does not include a transfer in bulk or as security for or in total or partial
7 satisfaction of a money debt.

8 (p) "Lessor" means a person who transfers the right to possession and use of
9 goods under a lease. Unless the context clearly indicates otherwise, the term
10 includes a sublessor.

11 (q) "Lessor's residual interest" means the lessor's interest in the goods after
12 expiration, termination, or cancellation of the lease contract.

13 (r) "Lien" means a charge against or interest in goods to secure payment of a debt
14 or performance of an obligation, but the term does not include a security
15 interest.

16 (s) "Lot" means a parcel or a single article that is the subject matter of a separate
17 lease or delivery, whether or not it is sufficient to perform the lease contract.

18 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of
19 the kind subject to the lease.

20 (u) "Present value" means the amount as of a date certain of one (1) or more sums
21 payable in the future, discounted to the date certain. The discount is
22 determined by the interest rate specified by the parties if the rate was not
23 manifestly unreasonable at the time the transaction was entered into;
24 otherwise, the discount is determined by a commercially reasonable rate that
25 takes into account the facts and circumstances of each case at the time the
26 transaction was entered into.

27 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,

1 gift, or any other voluntary transaction creating an interest in goods.

2 (w) "Sublease" means a lease of goods the right to possession and use of which
3 was acquired by the lessor as a lessee under an existing lease.

4 (x) "Supplier" means a person from whom a lessor buys or leases goods to be
5 leased under a finance lease.

6 (y) "Supply contract" means a contract under which a lessor buys or leases goods
7 to be leased.

8 (z) "Termination" occurs when either party pursuant to a power created by
9 agreement or law puts an end to the lease contract otherwise than for default.

10 (2) Other definitions applying to this article and the sections in which they appear are:

11 "Accessions." KRS 355.2A-310(1).

12 "Construction mortgage." KRS 355.2A-309(1)(d).

13 "Encumbrance." KRS 355.2A-309(1)(e).

14 "Fixtures." KRS 355.2A-309(1)(a).

15 "Fixture filing." KRS 355.2A-309(1)(b).

16 "Purchase money lease." KRS 355.2A-309(1)(c).

17 (3) The following definitions in other articles apply to this article:

18 "Account." KRS 355.9-102(1)(b).

19 "Between merchants." KRS 355.2-104(3).

20 "Buyer." KRS 355.2-103(1)(a).

21 "Chattel paper." KRS 355.9-102(1)(k).

22 "Consumer goods." KRS 355.9-102(1)(w).

23 "Document." KRS 355.9-102(1)(ad).

24 "Entrusting." KRS 355.2-403(3).

25 "General intangible." KRS 355.9-102(1)(ap).

26 ~~["Good faith." KRS 355.2-103(1)(b).]~~

27 "Instrument." KRS 355.9-102(1)(au).

1 "Merchant." KRS 355.2-104(1).

2 "Mortgage." KRS 355.9-102(1)(bc).

3 "Pursuant to commitment." KRS 355.9-102(1)(bp).

4 "Receipt." KRS 355.2-103(1)(c).

5 "Sale." KRS 355.2-106(1).

6 "Sale on approval." KRS 355.2-326.

7 "Sale or return." KRS 355.2-326.

8 "Seller." KRS 355.2-103(1)(d).

9 (4) In addition Article 1 contains general definitions and principles of construction and
10 interpretation applicable throughout this article.

11 Section 28. KRS 355.2A-501 is amended to read as follows:

12 (1) Whether the lessor or the lessee is in default under a lease contract is determined by
13 the lease agreement and this article.

14 (2) If the lessor or the lessee is in default under the lease contract, the party seeking
15 enforcement has rights and remedies as provided in this article and, except as
16 limited by this article, as provided in the lease agreement.

17 (3) If the lessor or the lessee is in default under the lease contract, the party seeking
18 enforcement may reduce the party's claim to judgment, or otherwise enforce the
19 lease contract by self-help or any available judicial procedure or nonjudicial
20 procedure, including administrative proceeding, arbitration, or the like, in
21 accordance with this article.

22 (4) Except as otherwise provided in subsection (1) of Section 19 of this Act [KRS
23 355.1-106(1)] or this article or the lease agreement, the rights and remedies referred
24 to in subsections (2) and (3) are cumulative.

25 (5) If the lease agreement covers both real property and goods, the party seeking
26 enforcement may proceed under this part as to the goods, or under other applicable
27 law as to both the real property and the goods in accordance with that party's rights

1 and remedies in respect of the real property, in which case this part does not apply.

2 Section 29. KRS 355.2A-518 is amended to read as follows:

3 (1) After a default by a lessor under the lease contract of the type described in
4 subsection (1) of KRS 355.2A-508, or, if agreed, after other default by the lessor,
5 the lessee may cover by making any purchase or lease of or contract to purchase or
6 lease goods in substitution for those due from the lessor.

7 (2) Except as otherwise provided with respect to damages liquidated in the lease
8 agreement (KRS 355.2A-504) or otherwise determined pursuant to agreement of the
9 parties (Section 16 of this Act~~KRS 355.1-102(3)~~) and KRS 355.2A-503), if a
10 lessee's cover is by a lease agreement substantially similar to the original lease
11 agreement and the new lease agreement is made in good faith and in a commercially
12 reasonable manner, the lessee may recover from the lessor as damages:

13 (a) The present value, as of the date of the commencement of the term of the new
14 lease agreement, of the rent under the new lease agreement applicable to that
15 period of the new lease term which is comparable to the then remaining term
16 of the original lease agreement minus the present value as of the same date of
17 the total rent for the then remaining lease term of the original lease agreement;
18 and

19 (b) Any incidental or consequential damages, less expenses saved in consequence
20 of the lesser's default.

21 (3) If a lessee's cover is by lease agreement that for any reason does not qualify for
22 treatment under subsection (2), or is by purchase or otherwise, the lessee may
23 recover from the lessor as if the lessee had elected not to cover and KRS 355.2A-
24 519 governs.

25 Section 30. KRS 355.2A-519 is amended to read as follows:

26 (1) Except as otherwise provided with respect to damages liquidated in the lease
27 agreement (KRS 355.2A-504) or otherwise determined pursuant to agreement of the

1 parties (*Section 16 of this Act*~~[KRS 355.1-102(3)]~~ and KRS 355.2A-503), if a
 2 lessee elects not to cover or a lessee elects to cover and the cover is by lease
 3 agreement that for any reason does not qualify for treatment under subsection (2) of
 4 KRS 355.2A-518, or is by purchase or otherwise, the measure of damages for
 5 nondelivery or repudiation by the lessor or for rejection or revocation of acceptance
 6 by the lessee is the present value, as of the date of the default, of the then market
 7 rent minus the present value as of the same date of the original rent, computed for
 8 the remaining lease term of the original lease agreement, together with incidental
 9 and consequential damages, less expenses saved in consequence of the lessor's
 10 default.

11 (2) Market rent is to be determined as of the place for tender or, in cases of rejection
 12 after arrival or revocation of acceptance, as of the place of arrival.

13 (3) Except as otherwise agreed, if the lessee has accepted goods and given notification
 14 (subsection (3) of KRS 355.2A-516), the measure of damages for nonconforming
 15 tender or delivery or other default by a lessor is the loss resulting in the ordinary
 16 course of events from the lessor's default as determined in any manner that is
 17 reasonable together with incidental and consequential damages, less expenses saved
 18 in consequence of the lessor's default.

19 (4) Except as otherwise agreed, the measure of damages for breach of warranty is the
 20 present value at the time and place of acceptance of the difference between the
 21 value of the use of the goods accepted and the value if they had been as warranted
 22 for the lease term, unless special circumstances show proximate damages of a
 23 different amount, together with incidental and consequential damages, less expenses
 24 saved in consequence of the lessor's default or breach of warranty.

25 Section 31. KRS 355.2A-527 is amended to read as follows:

26 (1) After a default by a lessee under the lease contract of the type described in KRS
 27 355.2A-523(1) or 355.2A-523(3)(a) or after the lessor refuses to deliver or takes

1 possession of goods (KRS 355.2A-525 or 355.2A-526), or, if agreed, after other
 2 default by a lessee, the lessor may dispose of the goods concerned or the
 3 undelivered balance thereof by lease, sale, or otherwise.

4 (2) Except as otherwise provided with respect to damages liquidated in the lease
 5 agreement (KRS 355.2A-504) or otherwise determined pursuant to agreement of the
 6 parties (Section 16 of this Act~~[KRS 355.1-102(3)]~~ and 355.2A-503), if the
 7 disposition is by lease agreement substantially similar to the original lease
 8 agreement and the new lease agreement is made in good faith and in a commercially
 9 reasonable manner, the lessor may recover from the lessee as damages:

10 (a) Accrued and unpaid rent as of the date of the commencement of the term of
 11 the new lease agreement;

12 (b) The present value, as of the same date of the total rent for the then remaining
 13 lease term of the original lease agreement minus the present value, as of the
 14 same date, of the rent under the new lease agreement applicable to that period
 15 of the new lease term which is comparable to the then remaining term of the
 16 original lease agreement; and

17 (c) Any incidental damages allowed under KRS 355.2A-530, less expenses saved
 18 in consequence of the lessee's default.

19 (3) If the lessor's disposition is by lease agreement that for any reason does not qualify
 20 for treatment under subsection (2), or is by sale or otherwise, the lessor may recover
 21 from the lessee as if the lessor had elected not to dispose of the goods and KRS
 22 355.2A-528 governs.

23 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
 24 value as a result of a disposition under this section takes the goods free of the
 25 original lease contract and any rights of the original lessee even though the lessor
 26 fails to comply with one (1) or more of the requirements of this article.

27 (5) The lessor is not accountable to the lessee for any profit made on any disposition. A

lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (5) of KRS 355.2A-508).

Section 32. KRS 355.2A-528 is amended to read as follows:

- (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (KRS 355.2A-504) or otherwise determined pursuant to agreement of the parties (*Section 16 of this Act*~~[KRS 355.1-102(3)]~~ and 355.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under KRS 355.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in KRS 355.2A-523(1) or 355.2A-523(3)(a), or, if agreed, for other default by the lessee:

- (a) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;
- (b) The present value as of the date determined under clause (a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and
- (c) Any incidental damages allowed under KRS 355.2A-530, less expenses saved in consequence of the lessee's default.

- (2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under KRS 355.2A-530, due allowance for costs reasonably incurred and

1 due credit for payments or proceeds of disposition.

2 Section 33. KRS 355.3-103 is amended to read as follows:

3 (1) In this article:

4 (a) "Acceptor" means a drawee who has accepted a draft.

5 (b) "Consumer account" means an account established by an individual
6 primarily for personal, family, or household purposes.

7 (c) "Consumer transaction" means a transaction in which an individual incurs
8 an obligation primarily for personal, family, or household purposes.

9 (d) "Drawee" means a person ordered in a draft to make payment.

10 (e) ~~(e)~~ "Drawer" means a person who signs or is identified in a draft as a person
11 ordering payment.

12 (f) ~~(d)~~ (Reserved) ~~"Good faith" means honesty in fact and the observance of~~
13 ~~reasonable commercial standards of fair dealing.~~

14 (g) ~~(e)~~ "Maker" means a person who signs or is identified in a note as a person
15 undertaking to pay.

16 (h) ~~(f)~~ "Order" means a written instruction to pay money signed by the person
17 giving the instruction. The instruction may be addressed to any person,
18 including the person giving the instruction, or to one (1) or more persons
19 jointly or in the alternative but not in succession. An authorization to pay is
20 not an order unless the person authorized to pay is also instructed to pay.

21 (i) ~~(g)~~ "Ordinary care" in the case of a person engaged in business means
22 observance of reasonable commercial standards, prevailing in the area in
23 which the person is located, with respect to the business in which the person is
24 engaged. In the case of a bank that takes an instrument for processing for
25 collection or payment by automated means, reasonable commercial standards
26 do not require the bank to examine the instrument if the failure to examine
27 does not violate the bank's prescribed procedures and the bank's procedures do

not vary unreasonably from general banking usage not disapproved by this article or Article 4 of this chapter.

~~(j)~~~~(h)~~ "Party" means a party to an instrument.

(k) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.

~~(l)~~~~(i)~~ "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

~~(m)~~~~(j)~~ "Prove" with respect to a fact means to meet the burden of establishing the fact **(subsection (2) of Section 9 of this Act**~~[KRS 355.1-201(8)]~~.

(n) (Reserved)

~~(o)~~~~(k)~~ "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(p) "Remotely-created item" means an item drawn on an account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(q) "Secondary obligor," with respect to an instrument, means:

- 1. An indorser or an accommodation party;**
- 2. A drawer having the obligation described in KRS 355.3-414(4); or**
- 3. Any other party to the instrument that has recourse against another party to the instrument pursuant to subsection (2) of Section 35 of this Act.**

(2) Other definitions applying to this article and the sections in which they appear are:

"Acceptance." KRS 355.3-409

"Accommodated party." KRS 355.3-419

1	"Accommodation party." KRS 355.3-419
2	<u>"Account." Section 45 of this Act</u>
3	"Alteration." KRS 355.3-407
4	"Anomalous indorsement." KRS 355.3-205
5	"Blank indorsement." KRS 355.3-205
6	"Cashier's check." KRS 355.3-104
7	"Certificate of deposit." KRS 355.3-104
8	"Certified check." KRS 355.3-409
9	"Check." KRS 355.3-104
10	"Consideration." KRS 355.3-303
11	"Draft." KRS 355.3-104
12	"Holder in due course." KRS 355.3-302
13	"Incomplete instrument." KRS 355.3-115
14	"Indorsement." KRS 355.3-204
15	"Indorser." KRS 355.3-204
16	"Instrument." KRS 355.3-104
17	"Issue." KRS 355.3-105
18	"Issuer." KRS 355.3-105
19	"Negotiable instrument." KRS 355.3-104
20	"Negotiation." KRS 355.3-201
21	"Note." KRS 355.3-104
22	"Payable at a definite time." KRS 355.3-108
23	"Payable on demand." KRS 355.3-108
24	"Payable to bearer." KRS 355.3-109
25	"Payable to order," KRS 355.3-109
26	"Payment." KRS 355.3-602
27	"Person entitled to enforce." KRS 355.3-301

- 1 "Presentment." KRS 355.3-501
- 2 "Reacquisition." KRS 355.3-207
- 3 "Special indorsement." KRS 355.3-205
- 4 "Teller's check." KRS 355.3-104
- 5 "Transfer of instrument." KRS 355.3-203
- 6 "Traveler's check." KRS 355.3-104
- 7 "Value." KRS 355.3-303

8 (3) The following definitions in other articles apply to this article:

- 9 [~~Bank." KRS 355.4-105]~~
- 10 "Banking day." KRS 355.4-104
- 11 "Clearing house." KRS 355.4-104
- 12 "Collecting bank." KRS 355.4-105
- 13 "Depository bank." KRS 355.4-105
- 14 "Documentary draft." KRS 355.4-104
- 15 "Intermediary bank." KRS 355.4-105
- 16 "Item." KRS 355.4-104
- 17 "Payor bank." KRS 355.4-105
- 18 "Suspends payments." KRS 355.4-104

19 (4) In addition, Article 1 of this chapter contains general definitions and principles of
20 construction and interpretation applicable throughout this article.

21 Section 34. KRS 355.3-106 is amended to read as follows:

22 (1) Except as provided in this section, for the purposes of KRS 355.3-104(1), a promise
23 or order is unconditional unless it states:

- 24 (a) An express condition to payment;
- 25 (b) That the promise or order is subject to or governed by another
- 26 record~~[writing]~~; or
- 27 (c) That rights or obligations with respect to the promise or order are stated in

1 another record~~[writing]~~. A reference to another record~~[writing]~~ does not of
2 itself make the promise or order conditional.

3 (2) A promise or order is not made conditional:

4 (a) By a reference to another record~~[writing]~~ for a statement of rights with respect
5 to collateral, prepayment, or acceleration; or

6 (b) Because payment is limited to resort to a particular fund or source.

7 (3) If a promise or order requires, as a condition to payment, a countersignature by a
8 person whose specimen signature appears on the promise or order, the condition
9 does not make the promise or order conditional for the purposes of KRS 355.3-
10 104(1). If the person whose specimen signature appears on an instrument fails to
11 countersign the instrument, the failure to countersign is a defense to the obligation
12 of the issuer, but the failure does not prevent a transferee of the instrument from
13 becoming a holder of the instrument.

14 (4) If a promise or order at the time it is issued or first comes into possession of a
15 holder contains a statement, required by applicable statutory or administrative law,
16 to the effect that the rights of a holder or transferee are subject to claims or defenses
17 that the issuer could assert against the original payee, the promise or order is not
18 thereby made conditional for the purposes of KRS 355.3-104(1); but if the promise
19 or order is an instrument, there cannot be a holder in due course of the instrument.

20 Section 35. KRS 355.3-116 is amended to read as follows:

21 (1) Except as otherwise provided in the instrument, two (2) or more persons who have
22 the same liability on an instrument as makers, drawers, acceptors, indorsers who
23 indorse as joint payees, or anomalous indorsers are jointly and severally liable in the
24 capacity in which they sign.

25 (2) Except as provided in KRS 355.3-419~~(6)~~~~[(5)]~~ or by agreement of the affected
26 parties, a party having joint and several liability who pays the instrument is entitled
27 to receive from any party having the same joint and several liability contribution in

1 accordance with applicable law.

2 ~~[(3) Discharge of one party having joint and several liability by a person entitled to~~
 3 ~~enforce the instrument does not affect the right under subsection (2) of this section~~
 4 ~~of a party having the same joint and several liability to receive contribution from the~~
 5 ~~party discharged.]~~

6 Section 36. KRS 355.3-119 is amended to read as follows:

7 In an action for breach of an obligation for which a third person is answerable over
 8 pursuant to this article or Article 4 of this chapter, the defendant may give the third
 9 person~~[written]~~ notice of the litigation *in a record*, and the person notified may then give
 10 similar notice to any other person who is answerable over. If the notice states:

- 11 (1) That the person notified may come in and defend; and
 - 12 (2) That failure to do so will bind the person notified in an action later brought by the
 13 person giving the notice as to any determination of fact common to the two (2)
 14 litigations,
- 15 the person notified is so bound unless after seasonable receipt of the notice the person
 16 notified does come in and defend.

17 Section 37. KRS 355.3-309 is amended to read as follows:

- 18 (1) A person not in possession of an instrument is entitled to enforce the instrument if:
 19 (a) The person *seeking to enforce the instrument:*
 20 *1. Was~~[in possession of the instrument and]~~ entitled to enforce the*
 21 *instrument~~[it]~~ when loss of possession occurred; or*
 22 *2. Has directly or indirectly acquired ownership of the instrument from a*
 23 *person who was entitled to enforce the instrument when loss of*
 24 *possession occurred;*
 25 (b) The loss of possession was not the result of a transfer by the person or a
 26 lawful seizure; and
 27 (c) The person cannot reasonably obtain possession of the instrument because the

1 instrument was destroyed, its whereabouts cannot be determined, or it is in the
 2 wrongful possession of an unknown person or a person that cannot be found
 3 or is not amenable to service of process.

4 (2) A person seeking enforcement of an instrument under subsection (1) of this section
 5 must prove the terms of the instrument and the person's right to enforce the
 6 instrument. If that proof is made, KRS 355.3-308 applies to the case as if the person
 7 seeking enforcement had produced the instrument. The court may not enter
 8 judgment in favor of the person seeking enforcement unless it finds that the person
 9 required to pay the instrument is adequately protected against loss that might occur
 10 by reason of a claim by another person to enforce the instrument. Adequate
 11 protection may be provided by any reasonable means.

12 Section 38. KRS 355.3-312 is amended to read as follows:

13 (1) In this section:

14 (a) "Check" means a cashier's check, teller's check, or certified check.

15 (b) "Claimant" means a person who claims the right to receive the amount of a
 16 cashier's check, teller's check, or certified check that was lost, destroyed, or
 17 stolen.

18 (c) "Declaration of loss" means a ~~written~~ statement, made in a record under
 19 penalty of perjury, to the effect that:

- 20 1. The declarer lost possession of a check;
- 21 2. The declarer is the drawer or payee of the check, in the case of a
 22 certified check, or the remitter or payee of the check, in the case of a
 23 cashier's check or teller's check;
- 24 3. The loss of possession was not the result of a transfer by the declarer or
 25 a lawful seizure; and
- 26 4. The declarer cannot reasonably obtain possession of the check because
 27 the check was destroyed, its whereabouts cannot be determined, or it is

1 in the wrongful possession of an unknown person or a person that
2 cannot be found or is not amenable to service of process.

3 (d) "Obligated bank" means the issuer of a cashier's check or teller's check or the
4 acceptor of a certified check.

5 (2) (a) A claimant may assert a claim to the amount of a check by a communication
6 to the obligated bank describing the check with reasonable certainty and
7 requesting payment of the amount of the check, if:

- 8 1. The claimant is the drawer or payee of a certified check or the remitter
9 or payee of a cashier's check or teller's check;
- 10 2. The communication contains or is accompanied by a declaration of loss
11 of the claimant with respect to the check;
- 12 3. The communication is received at a time and in a manner affording the
13 bank a reasonable time to act on it before the check is paid; and
- 14 4. The claimant provides reasonable identification if requested by the
15 obligated bank. Delivery of a declaration of loss is a warranty of the
16 truth of the statements made in the declaration.

17 (b) If a claim is asserted in compliance with this subsection, the following rules
18 apply:

- 19 1. The claim becomes enforceable at the later of:
 - 20 a. The time the claim is asserted, or
 - 21 b. The ninetieth day following the date of the check, in the case of a
22 cashier's check or teller's check, or the ninetieth day following the
23 date of the acceptance, in the case of a certified check.
- 24 2. Until the claim becomes enforceable, it has no legal effect and the
25 obligated bank may pay the check or, in the case of a teller's check, may
26 permit the drawee to pay the check. Payment to a person entitled to
27 enforce the check discharges all liability of the obligated bank with

1 respect to the check.

2 3. If the claim becomes enforceable before the check is presented for
3 payment, the obligated bank is not obliged to pay the check.

4 4. When the claim becomes enforceable, the obligated bank becomes
5 obliged to pay the amount of the check to the claimant if payment of the
6 check has not been made to a person entitled to enforce the check.

7 Subject to KRS 355.4-302(1)(a), payment to the claimant discharges all
8 liability of the obligated bank with respect to the check.

9 (3) If the obligated bank pays the amount of a check to a claimant under subsection
10 (2)(b)4. of this section and the check is presented for payment by a person having
11 rights of a holder in due course, the claimant is obliged to:

12 (a) Refund the payment to the obligated bank if the check is paid; or

13 (b) Pay the amount of the check to the person having rights of a holder in due
14 course if the check is dishonored.

15 (4) If a claimant has the right to assert a claim under subsection (2) of this section and
16 is also a person entitled to enforce a cashier's check, teller's check, or certified check
17 which is lost, destroyed, or stolen, the claimant may assert rights with respect to the
18 check either under this section or KRS 355.3-309.

19 Section 39. KRS 355.3-416 is amended to read as follows:

20 (1) A person who transfers an instrument for consideration warrants to the transferee
21 and, if the transfer is by indorsement, to any subsequent transferee that:

22 (a) The warrantor is a person entitled to enforce the instrument;

23 (b) All signatures on the instrument are authentic and authorized;

24 (c) The instrument has not been altered;

25 (d) The instrument is not subject to a defense or claim in recoupment of any party
26 which can be asserted against the warrantor;~~{and}~~

27 (e) The warrantor has no knowledge of any insolvency proceeding commenced

1 with respect to the maker or acceptor or, in the case of an unaccepted draft, the
 2 drawer; and

3 (f) With respect to a remotely-created item, that the person on whose account
 4 the item is drawn authorized the issuance of the item in the amount for
 5 which the item is drawn.

6 (2) A person to whom the warranties under subsection (1) of this section are made and
 7 who took the instrument in good faith may recover from the warrantor as damages
 8 for breach of warranty an amount equal to the loss suffered as a result of the breach,
 9 but not more than the amount of the instrument plus expenses and loss of interest
 10 incurred as a result of the breach.

11 (3) The warranties stated in subsection (1) of this section cannot be disclaimed with
 12 respect to checks. Unless notice of a claim for breach of warranty is given to the
 13 warrantor within thirty (30) days after the claimant has reason to know of the breach
 14 and the identity of the warrantor, the liability of the warrantor under subsection (2)
 15 of this section is discharged to the extent of any loss caused by the delay in giving
 16 notice of the claim.

17 (4) A claim for relief for breach of warranty under this section accrues when the
 18 claimant has reason to know of the breach.

19 Section 40. KRS 355.3-417 is amended to read as follows:

20 (1) (a) If an unaccepted draft is presented to the drawee for payment or acceptance
 21 and the drawee pays or accepts the draft,

22 1. The person obtaining payment or acceptance, at the time of presentment;
 23 and

24 2. A previous transferor of the draft, at the time of transfer,
 25 warrant to the drawee making payment or accepting the draft in good faith the
 26 conditions set out in paragraph (b) of this subsection.

27 (b) 1. The warrantor is, or was, at the time the warrantor transferred the draft, a

1 person entitled to enforce the draft or authorized to obtain payment or
 2 acceptance of the draft on behalf of a person entitled to enforce the draft;

3 2. The draft has not been altered;~~[-and]~~

4 3. The warrantor has no knowledge that the signature of the drawer of the
 5 draft is unauthorized; and

6 4. With respect to any remotely-created item, that the person on whose
 7 account the item is drawn authorized the issuance of the item in the
 8 amount for which the item is drawn.

9 (2) A drawee making payment may recover from any warrantor damages for breach of
 10 warranty equal to the amount paid by the drawee less the amount the drawee
 11 received or is entitled to receive from the drawer because of the payment. In
 12 addition, the drawee is entitled to compensation for expenses and loss of interest
 13 resulting from the breach. The right of the drawee to recover damages under this
 14 subsection is not affected by any failure of the drawee to exercise ordinary care in
 15 making payment. If the drawee accepts the draft, breach of warranty is a defense to
 16 the obligation of the acceptor. If the acceptor makes payment with respect to the
 17 draft, the acceptor is entitled to recover from any warrantor for breach of warranty
 18 the amounts stated in this subsection.

19 (3) If a drawee asserts a claim for breach of warranty under subsection (1) of this
 20 section based on an unauthorized indorsement of the draft or an alteration of the
 21 draft, the warrantor may defend by proving that the indorsement is effective under
 22 KRS 355.3-404 or 355.3-405 or the drawer is precluded under KRS 355.3-406 or
 23 355.4-406 from asserting against the drawee the unauthorized indorsement or
 24 alteration.

25 (4) (a) If:

26 1. a. A dishonored draft is presented for payment to the drawer or an
 27 indorser; or

1 b. Any other instrument is presented for payment to a party obliged to
2 pay the instrument; and

3 2. Payment is received,
4 the rules set out in paragraph (b) of this section apply:

5 (b) 1. The person obtaining payment and a prior transferor of the instrument
6 warrant to the person making payment in good faith that the warrantor
7 is, or was, at the time the warrantor transferred the instrument, a person
8 entitled to enforce the instrument or authorized to obtain payment on
9 behalf of a person entitled to enforce the instrument.

10 2. The person making payment may recover from any warrantor for breach
11 of warranty an amount equal to the amount paid plus expenses and loss
12 of interest resulting from the breach.

13 (5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed
14 with respect to checks. Unless notice of a claim for breach of warranty is given to
15 the warrantor within thirty (30) days after the claimant has reason to know of the
16 breach and the identity of the warrantor, the liability of the warrantor under
17 subsection (2) or (4) of this section is discharged to the extent of any loss caused by
18 the delay in giving notice of the claim.

19 (6) A claim for relief for breach of warranty under this section accrues when the
20 claimant has reason to know of the breach.

21 Section 41. KRS 355.3-419 is amended to read as follows:

22 (1) If an instrument is issued for value given for the benefit of a party to the instrument
23 ("accommodated party") and another party to the instrument ("accommodation
24 party") signs the instrument for the purpose of incurring liability on the instrument
25 without being a direct beneficiary of the value given for the instrument, the
26 instrument is signed by the accommodation party "for accommodation."

27 (2) An accommodation party may sign the instrument as maker, drawer, acceptor, or

1 indorser and, subject to subsection (4) of this section, is obliged to pay the
 2 instrument in the capacity in which the accommodation party signs. The obligation
 3 of an accommodation party may be enforced notwithstanding any statute of frauds
 4 and whether or not the accommodation party receives consideration for the
 5 accommodation.

6 (3) A person signing an instrument is presumed to be an accommodation party and
 7 there is notice that the instrument is signed for accommodation if the signature is an
 8 anomalous indorsement or is accompanied by words indicating that the signer is
 9 acting as surety or guarantor with respect to the obligation of another party to the
 10 instrument. Except as provided in KRS 355.3-605, the obligation of an
 11 accommodation party to pay the instrument is not affected by the fact that the
 12 person enforcing the obligation had notice when the instrument was taken by that
 13 person that the accommodation party signed the instrument for accommodation.

14 (4) If the signature of a party to an instrument is accompanied by words indicating
 15 unambiguously that the party is guaranteeing collection rather than payment of the
 16 obligation of another party to the instrument, the signer is obliged to pay the amount
 17 due on the instrument to a person entitled to enforce the instrument only if:

- 18 (a) Execution of judgment against the other party has been returned unsatisfied;
- 19 (b) The other party is insolvent or in an insolvency proceeding;
- 20 (c) The other party cannot be served with process; or
- 21 (d) It is otherwise apparent that payment cannot be obtained from the other party.

22 (5) If the signature of a party to an instrument is accompanied by words indicating
 23 that the party guarantees payment or the signer signs the instrument as an
 24 accommodation party in some other manner that does not unambiguously
 25 indicate an intention to guarantee collection rather than payment, the signer is
 26 obliged to pay the amount due on the instrument to a person entitled to enforce
 27 the instrument in the same circumstances as the accommodated party would be

obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(6) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party ~~that~~^{who} pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Section 42. KRS 355.3-602 is amended to read as follows:

(1) Subject to subsection ~~(5)~~⁽²⁾ of this section, an instrument is paid to the extent payment is made~~[-~~:

~~(a)---~~ by or on behalf of a party obliged to pay the instrument~~[-~~ and

~~[(b)---~~ to a person entitled to enforce the instrument.

(2) Subject to subsection (5) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee; reasonably identifies the transferred note; and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection (3) of this section even if the party obliged to pay the note has received a notification under this subsection.

(3) Subject to subsection (5) of this section, to the extent of a~~[the]~~ payment under

1 subsections (1) and (2) of this section, the obligation of the party obliged to pay the
 2 instrument is discharged even though payment is made with knowledge of a claim
 3 to the instrument under KRS 355.3-306 by another person.

4 (4) Subject to subsection (5) of this section, a transferee, or any party that has
 5 acquired rights in the instrument directly or indirectly from a transferee,
 6 including any such party that has rights as a holder in due course, is deemed to
 7 have notice of any payment that is made under subsection (2) of this section after
 8 the date that the note is transferred to the transferee but before the party obliged
 9 to pay the note receives adequate notification of the transfer.

10 ~~(5)(2)~~ The obligation of a party to pay the instrument is not discharged under
 11 subsections (1) to (4)~~[subsection (1)]~~ of this section if:

12 (a) A claim to the instrument under KRS 355.3-306 is enforceable against the
 13 party receiving payment; and

14 1. Payment is made with knowledge by the payor that payment is
 15 prohibited by injunction or similar process of a court of competent
 16 jurisdiction; or

17 2. In the case of an instrument other than a cashier's check, teller's check,
 18 or certified check, the party making payment accepted, from the person
 19 having a claim to the instrument, indemnity against loss resulting from
 20 refusal to pay the person entitled to enforce the instrument; or

21 (b) The person making payment knows that the instrument is a stolen instrument
 22 and pays a person it knows is in wrongful possession of the instrument.

23 (6) As used in the section, "signed," with respect to a record that is not a writing,
 24 includes the attachment to or logical association with the record of an electronic
 25 symbol, sound, or process with the present intent to adopt or accept the record.

26 Section 43. KRS 355.3-604 is amended to read as follows:

27 (1) A person entitled to enforce an instrument, with or without consideration, may

1 discharge the obligation of a party to pay the instrument:

2 (a) By an intentional voluntary act, such as surrender of the instrument to the
3 party, destruction, mutilation, or cancellation of the instrument, cancellation
4 or striking out of the party's signature, or the addition of words to the
5 instrument indicating discharge; or

6 (b) By agreeing not to sue or otherwise renouncing rights against the party by a
7 signed record~~[writing]~~.

8 (2) Cancellation or striking out of an indorsement pursuant to subsection (1) of this
9 section does not affect the status and rights of a party derived from the indorsement.

10 (3) In this section, "signed," with respect to a record that is not in writing, includes
11 the attachment to or logical association with the record of an electronic symbol,
12 sound, or process with the present intent to adopt or accept the record.

13 SECTION 44. KRS 355.3-605 IS REPEALED AND REENACTED TO READ
14 AS FOLLOWS:

15 (1) If a person entitled to enforce an instrument releases the obligation of a principal
16 obligor in whole or in part, and another party to the instrument is a secondary
17 obligor with respect to the obligation of that principal obligor, the following rules
18 apply:

19 (a) Any obligations of the principal obligor to the secondary obligor with
20 respect to any previous payment by the secondary obligor are not affected.
21 Unless the terms of the release preserve the secondary obligor's recourse,
22 the principal obligor is discharged, to the extent of the release, from any
23 other duties to the secondary obligor under this article.

24 (b) Unless the terms of the release provide that the person entitled to enforce
25 the instrument retains the right to enforce the instrument against the
26 secondary obligor, the secondary obligor is discharged to the same extent as
27 the principal obligor from any unperformed portion of its obligation on the

1 instrument. If the instrument is a check and the obligation of the secondary
2 obligor is based on an indorsement of the check, the secondary obligor is
3 discharged without regard to the language or circumstances of the
4 discharge or other release.

5 (c) If the secondary obligor is not discharged under paragraph (b) of this
6 subsection, the secondary obligor is discharged to the extent of the value of
7 the consideration for the release, and to the extent that the release would
8 otherwise cause the secondary obligor a loss.

9 (2) If a person entitled to enforce an instrument grants a principal obligor an
10 extension of the time at which one or more payments are due on the instrument
11 and another party to the instrument is a secondary obligor with respect to the
12 obligation of that principal obligor, the following rules apply:

13 (a) Any obligations of the principal obligor to the secondary obligor with
14 respect to any previous payment by the secondary obligor are not affected.
15 Unless the terms of the extension preserve the secondary obligor's recourse,
16 the extension correspondingly extends the time for performance of any
17 other duties owed to the secondary obligor by the principal obligor under
18 this article.

19 (b) The secondary obligor is discharged to the extent that the extension would
20 otherwise cause the secondary obligor a loss.

21 (c) To the extent that the secondary obligor is not discharged under paragraph
22 (b) of this subsection, the secondary obligor may perform its obligations to a
23 person entitled to enforce the instrument as if the time for payment had not
24 been extended or, unless the terms of the extension provide that the person
25 entitled to enforce the instrument retains the right to enforce the instrument
26 against the secondary obligor as if the time for payment had not been
27 extended, treat the time for performance of its obligations as having been

1 extended correspondingly.

2 (3) If a person entitled to enforce an instrument agrees, with or without
3 consideration, to a modification of the obligation of a principal obligor other
4 than a complete or partial release or an extension of the due date and another
5 party to the instrument is a secondary obligor with respect to the obligation of
6 that principal obligor, the following rules apply:

7 (a) Any obligations of the principal obligor to the secondary obligor with
8 respect to any previous payment by the secondary obligor are not affected.
9 The modification correspondingly modifies any other duties owed to the
10 secondary obligor by the principal obligor under this article.

11 (b) The secondary obligor is discharged from any unperformed portion of its
12 obligation to the extent that the modification would otherwise cause the
13 secondary obligor a loss.

14 (c) To the extent that the secondary obligor is not discharged under paragraph
15 (b) of this subsection, the secondary obligor may satisfy its obligation on the
16 instrument as if the modification had not occurred, or treat its obligation on
17 the instrument as having been modified correspondingly.

18 (4) If the obligation of a principal obligor is secured by an interest in collateral,
19 another party to the instrument is a secondary obligor with respect to that
20 obligation, and a person entitled to enforce the instrument impairs the value of
21 the interest in collateral, the obligation of the secondary obligor is discharged to
22 the extent of the impairment. The value of an interest in collateral is impaired to
23 the extent the value of the interest is reduced to an amount less than the amount
24 of the recourse of the secondary obligor, or the reduction in value of the interest
25 causes an increase in the amount by which the amount of the recourse exceeds
26 the value of the interest. For purposes of this subsection, impairing the value of
27 an interest in collateral includes failure to obtain or maintain perfection or

1 recordation of the interest in collateral, release of collateral without substitution
 2 of collateral of equal value or equivalent reduction of the underlying obligation,
 3 failure to perform a duty to preserve the value of collateral owed, under Article 9
 4 of this chapter or other law, to a debtor or other person secondarily liable, and
 5 failure to comply with applicable law in disposing of or otherwise enforcing the
 6 interest in collateral.

7 (5) A secondary obligor is not discharged under subsections (1)(c), (2), (3), or (4) of
 8 this section unless the person entitled to enforce the instrument knows that the
 9 person is a secondary obligor or has notice under subsection (3) of Section 41 of
 10 this Act that the instrument was signed for accommodation.

11 (6) A secondary obligor is not discharged under this section if the secondary obligor
 12 consents to the event or conduct that is the basis of the discharge, or the
 13 instrument or a separate agreement of the party provides for waiver of discharge
 14 under this section specifically or by general language indicating that parties
 15 wave defenses based on suretyship or impairment of collateral. Unless the
 16 circumstances indicate otherwise, consent by the principal obligor to an act that
 17 would lead to a discharge under this section constitutes consent to that act by the
 18 secondary obligor if the secondary obligor controls the principal obligor or deals
 19 with the person entitled to enforce the instrument on behalf of the principal
 20 obligor.

21 (7) A release or extension preserves a secondary obligor's recourse if the terms of the
 22 release or extension provide that:

23 (a) The person entitled to enforce the instrument retains the right to enforce the
 24 instrument against the secondary obligor; and

25 (b) The recourse of the secondary obligor continues as if the release or
 26 extension had not been granted.

27 (8) Except as otherwise provided in subsection (9) of this section, a secondary obligor

1 asserting discharge under this section has the burden of persuasion both with
 2 respect to the occurrence of the acts alleged to harm the secondary obligor and
 3 loss or prejudice caused by those acts.

4 (9) If the secondary obligor demonstrates prejudice caused by an impairment of its
 5 recourse, and the circumstances of the case indicate that the amount of a loss is
 6 not reasonably susceptible of calculation or requires proof of facts that are not
 7 ascertainable, it is presumed that the act impairing recourse caused a loss or
 8 impairment equal to the liability of the secondary obligor on the instrument. In
 9 that event, the burden of persuasion as to any lesser amount of the loss is on the
 10 person entitled to enforce the instrument.

11 Section 45. KRS 355.4-104 is amended to read as follows:

- 12 (1) In this article, unless the context otherwise requires:
- 13 (a) "Account" means any deposit or credit account with a bank, including a
 14 demand, time, savings, passbook, share draft, or like account, other than an
 15 account evidenced by a certificate of deposit;
 - 16 (b) "Afternoon" means the period of a day between noon and midnight;
 - 17 (c) "Banking day" means the part of a day on which a bank is open to the public
 18 for carrying on substantially all of its banking functions;
 - 19 (d) "Clearing house" means an association of banks or other payors regularly
 20 clearing items;
 - 21 (e) "Customer" means a person having an account with a bank or for whom a
 22 bank has agreed to collect items including a bank that maintains an account at
 23 another bank;
 - 24 (f) "Documentary draft" means a draft to be presented for acceptance or payment
 25 if specified documents, certificated securities (KRS 355.8-102) or instructions
 26 for uncertificated securities (KRS 355.8-102), or other certificates, statements,
 27 or the like are to be received by the drawee or other payor before acceptance

1 or payment of the draft;

2 (g) "Draft" means a draft as defined in KRS 355.3-104 or an item, other than an
3 instrument, that is an order;

4 (h) "Drawee" means a person ordered in a draft to make payment;

5 (i) "Item" means an instrument or a promise or order to pay money handled by a
6 bank for collection or payment. The term does not include a payment order
7 governed by Article 4A of this chapter or a credit or debit card slip;

8 (j) "Midnight deadline" with respect to a bank is midnight on its next banking
9 day following the banking day on which it receives the relevant item or notice
10 or from which the time for taking action commences to run, whichever is
11 later;

12 (k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or
13 credit or by remittance, or otherwise as agreed. A settlement may be either
14 provisional or final;

15 (l) "Suspends payments" with respect to a bank means that it has been closed by
16 order of the supervisory authorities, that a public officer has been appointed to
17 take it over, or that it ceases or refuses to make payments in the ordinary
18 course of business.

19 (2) Other definitions applying to this article and the sections in which they appear are:

20 "Agreement for electronic presentment." KRS 355.4-110.

21 [~~—————"Bank." KRS 355.4-105.~~]

22 "Collecting bank." KRS 355.4-105.

23 "Depository bank." KRS 355.4-105.

24 "Intermediary bank." KRS 355.4-105.

25 "Payor bank." KRS 355.4-105.

26 "Presenting bank." KRS 355.4-105.

27 "Presentment notice." KRS 355.4-110.

1 (3) The following definitions in other articles apply to this article:

2 "Acceptance." KRS 355.3-409.

3 "Alteration." KRS 355.3-407.

4 "Cashier's check." KRS 355.3-104.

5 "Certificate of deposit." KRS 355.3-104.

6 "Certified check." KRS 355.3-409.

7 "Check." KRS 355.3-104.

8 ~~["Good faith." KRS 355.3-103.]~~

9 "Holder in due course." KRS 355.3-302.

10 "Instrument." KRS 355.3-104.

11 "Notice of dishonor." KRS 355.3-503.

12 "Order." KRS 355.3-103.

13 "Ordinary care." KRS 355.3-103.

14 "Person entitled to enforce." KRS 355.3-301.

15 "Presentment." KRS 355.3-501.

16 "Promise." KRS 355.3-103.

17 "Prove." KRS 355.3-103.

18 **"Record." Section 9 of this Act.**

19 **"Remotely-created item." Section 33 of this Act.**

20 "Teller's check." KRS 355.3-104.

21 "Unauthorized signature." KRS 355.3-403.

22 (4) In addition, Article 1 of this chapter contains general definitions and principles of
23 construction and interpretation applicable throughout this article.

24 Section 46. KRS 355.4-105 is amended to read as follows:

25 In this article:

26 (1) **(Reserved)**~~["Bank" means a person engaged in the business of banking, including a~~
27 ~~savings bank, savings and loan association, credit union, or trust company.]~~

- 1 (2) "Depository bank" means the first bank to take an item even though it is also the
 2 payor bank, unless the item is presented for immediate payment over the counter;
- 3 (3) "Payor bank" means a bank that is the drawee of a draft;
- 4 (4) "Intermediary bank" means a bank to which an item is transferred in course of
 5 collection except the depository or payor bank;
- 6 (5) "Collecting bank" means a bank handling the item for collection except the payor
 7 bank;
- 8 (6) "Presenting bank" means a bank presenting an item except a payor bank.

9 Section 47. KRS 355.4-207 is amended to read as follows:

- 10 (1) A customer or collecting bank that transfers an item and receives a settlement or
 11 other consideration warrants to the transferee and to any subsequent collecting bank
 12 that:
- 13 (a) The warrantor is a person entitled to enforce the item;
- 14 (b) All signatures on the item are authentic and authorized;
- 15 (c) The item has not been altered;
- 16 (d) The item is not subject to a defense or claim in recoupment (KRS 355.3-
 17 305(1)) of any party that can be asserted against the warrantor;~~[-and]~~
- 18 (e) The warrantor has no knowledge of any insolvency proceeding commenced
 19 with respect to the maker or acceptor or, in the case of an unaccepted draft, the
 20 drawer; and
- 21 (f) With respect to any remotely-created item, that person on whose account the
 22 item is drawn authorized the issuance of the item in the amount for which
 23 the item is drawn.
- 24 (2) If an item is dishonored, a customer or collecting bank transferring the item and
 25 receiving settlement or other consideration is obliged to pay the amount due on the
 26 item:
- 27 (a) According to the terms of the item at the time it was transferred; or

1 (b) If the transfer was of an incomplete item, according to its terms when
2 completed as stated in KRS 355.3-115 and 355.3-407.

3 The obligation of a transferor is owed to the transferee and to any subsequent
4 collecting bank that takes the item in good faith. A transferor cannot disclaim its
5 obligation under this subsection by an indorsement stating that it is made "without
6 recourse" or otherwise disclaiming liability.

7 (3) A person to whom the warranties under subsection (1) of this section are made and
8 who took the item in good faith may recover from the warrantor as damages for
9 breach of warranty an amount equal to the loss suffered as a result of the breach, but
10 not more than the amount of the item plus expenses and loss of interest incurred as
11 a result of the breach.

12 (4) The warranties stated in subsection (1) of this section cannot be disclaimed with
13 respect to checks. Unless notice of a claim for breach of warranty is given to the
14 warrantor within thirty (30) days after the claimant has reason to know of the breach
15 and the identity of the warrantor, the warrantor is discharged to the extent of any
16 loss caused by the delay in giving notice of the claim.

17 (5) A claim for relief for breach of warranty under this section accrues when the
18 claimant has reason to know of the breach.

19 Section 48. KRS 355.4-208 is amended to read as follows:

20 (1) (a) If an unaccepted draft is presented to the drawee for payment or acceptance
21 and the drawee pays or accepts the draft,

22 1. The person obtaining payment or acceptance, at the time of presentment;
23 and

24 2. A previous transferor of the draft, at the time of transfer,
25 warrant to the drawee that pays or accepts the draft in good faith the
26 conditions set out in paragraph (b) of this subsection.

27 (b) 1. The warrantor is, or was, at the time the warrantor transferred the draft, a

1 person entitled to enforce the draft or authorized to obtain payment or
 2 acceptance of the draft on behalf of a person entitled to enforce the draft;

3 2. The draft has not been altered;~~[- and]~~

4 3. The warrantor has no knowledge that the signature of the purported
 5 drawer of the draft is unauthorized; and

6 4. With respect to any remotely-created item, that the person on whose
 7 account the item is drawn authorized the issuance of the item in the
 8 amount for which the item is drawn.

9 (2) A drawee making payment may recover from a warrantor damages for breach of
 10 warranty equal to the amount paid by the drawee less the amount the drawee
 11 received or is entitled to receive from the drawer because of the payment. In
 12 addition, the drawee is entitled to compensation for expenses and loss of interest
 13 resulting from the breach. The right of the drawee to recover damages under this
 14 subsection is not affected by any failure of the drawee to exercise ordinary care in
 15 making payment. If the drawee accepts the draft:

16 (a) Breach of warranty is a defense to the obligation of the acceptor; and

17 (b) If the acceptor makes payment with respect to the draft, the acceptor is entitled
 18 to recover from a warrantor for breach of warranty the amounts stated in this
 19 subsection.

20 (3) If a drawee asserts a claim for breach of warranty under subsection (1) of this
 21 section based on an unauthorized indorsement of the draft or an alteration of the
 22 draft, the warrantor may defend by proving that the indorsement is effective under
 23 KRS 355.3-404 or 355.3-405 or the drawer is precluded under KRS 355.3-406 or
 24 355.4-406 from asserting against the drawee the unauthorized indorsement or
 25 alteration.

26 (4) If:

27 (a) A dishonored draft is presented for payment to the drawer or an indorser; or

(b) Any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 49. KRS 355.4-212 is amended to read as follows:

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing~~[written]~~ notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under KRS 355.3-501 by the close of the bank's next banking day after it knows of the requirement.

(2) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under KRS 355.3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may

1 treat the item as dishonored and charge any drawer or indorser by sending it notice
2 of the facts.

3 Section 50. KRS 355.4-301 is amended to read as follows:

4 (1) If a payor bank settles for a demand item other than a documentary draft presented
5 otherwise than for immediate payment over the counter before midnight of the
6 banking day of receipt, the payor bank may revoke the settlement and recover the
7 settlement if, before it has made final payment and before its midnight deadline, it:

8 (a) returns the item; or

9 (b) sends a record providing~~[written]~~ notice of dishonor or nonpayment if the
10 item is unavailable for return.

11 (2) If a demand item is received by a payor bank for credit on its books, it may return
12 the item or send notice of dishonor and may revoke any credit given or recover the
13 amount thereof withdrawn by its customer, if it acts within the time limit and in the
14 manner specified in subsection (1) of this section.

15 (3) Unless previous notice of dishonor has been sent, an item is dishonored at the time
16 when for purposes of dishonor it is returned or notice sent in accordance with this
17 section.

18 (4) An item is returned:

19 (a) As to an item presented through a clearing house, when it is delivered to the
20 presenting or last collecting bank or to the clearing house or is sent or
21 delivered in accordance with clearing-house rules; or

22 (b) In all other cases, when it is sent or delivered to the bank's customer or
23 transferor or pursuant to instructions.

24 Section 51. KRS 355.4-403 is amended to read as follows:

25 (1) A customer or any person authorized to draw on the account if there is more than
26 one (1) person may stop payment of any item drawn on the customer's account or
27 close the account by an order to the bank describing the item or account with

reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in KRS 355.4-303. If the signature of more than one (1) person is required to draw on an account, any of these persons may stop payment or close the account.

(2) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in a record~~[writing]~~ within that period. A stop-payment order may be renewed for additional six (6) month periods by a record~~[writing]~~ given to the bank within a period during which the stop-payment order is effective.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under KRS 355.4-402.

Section 52. KRS 355.4A-105 is amended to read as follows:

(1) In this article:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(c) "Customer" means a person, including a bank, having an account with a bank

1 or from whom a bank has agreed to receive payment orders.

2 (d) "Funds-transfer business day" of a receiving bank means the part of a day
3 during which the receiving bank is open for the receipt, processing, and
4 transmittal of payment orders and cancellations and amendments of payment
5 orders.

6 (e) "Funds-transfer system" means a wire transfer network, automated clearing
7 house, or other communication system of a clearing house or other association
8 of banks through which a payment order by a bank may be transmitted to the
9 bank to which the order is addressed.

10 (f) ~~**(Reserved)**["Good faith" means honesty in fact and the observance of~~
11 ~~reasonable commercial standards of fair dealing.]~~

12 (g) "Prove" with respect to a fact means to meet the burden of establishing the
13 fact, as defined in subsection (2) of Section 9 of this Act~~[KRS 355.1-201(8)]~~.

14 (2) Other definitions applying to this article and the sections of this article in which
15 they appear are:

16 "Acceptance" KRS 355.4A-209

17 "Beneficiary" KRS 355.4A-103

18 "Beneficiary's bank" KRS 355.4A-103

19 "Executed" KRS 355.4A-301

20 "Execution date" KRS 355.4A-301

21 "Funds transfer" KRS 355.4A-104

22 "Funds-transfer system rule" KRS 355.4A-501

23 "Intermediary bank" KRS 355.4A-104

24 "Originator" KRS 355.4A-104

25 "Originator's bank" KRS 355.4A-104

26 "Payment by beneficiary's bank to beneficiary" KRS 355.4A-405

27 "Payment by originator to beneficiary" KRS 355.4A-406

1 "Payment by sender to receiving bank" KRS 355.4A-403

2 "Payment date" KRS 355.4A-401

3 "Payment order" KRS 355.4A-103

4 "Receiving bank" KRS 355.4A-103

5 "Security procedure" KRS 355.4A-201

6 "Sender" KRS 355.4A-103

7 (3) The following definitions in Article 4 of KRS Chapter 355 apply to this article:

8 "Clearing house" KRS 355.4-104

9 "Item" KRS 355.4-104

10 "Suspends payments" KRS 355.4-104

11 (4) In addition Article 1 of KRS Chapter 355 contains general definitions and principles
12 of construction and interpretation applicable throughout this article.

13 Section 53. KRS 355.4A-106 is amended to read as follows:

14 (1) The time of receipt of a payment order or communication canceling or amending a
15 payment order is determined by the rules applicable to receipt of a notice stated in
16 Section 10 of this Act ~~[KRS 355.1-201(27)]~~. A receiving bank may fix a cutoff time
17 or times on a funds-transfer business day for the receipt and processing of payment
18 orders and communications canceling or amending payment orders. Different cutoff
19 times may apply to payment orders, cancellations, or amendments, or to different
20 categories of payment orders, cancellations, or amendments. A cutoff time may
21 apply to senders generally or different cutoff times may apply to different senders or
22 categories of payment orders. If a payment order or communication canceling or
23 amending a payment order is received after the close of a funds-transfer business
24 day or after the appropriate cutoff time on a funds-transfer business day, the
25 receiving bank may treat the payment order or communication as received at the
26 opening of the next funds-transfer business day.

27 (2) If this article refers to an execution date or payment date or states a day on which a

receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

Section 54. KRS 355.4A-204 is amended to read as follows:

(1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is:

(a) Not authorized and not effective as the order of the customer under KRS 355.4A-202; or

(b) Not enforceable, in whole or in part, against the customer under KRS 355.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in subsection (2) of Section 16 of this Act ~~KRS 355.1-204(1)]~~, but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

Section 55. KRS 355.5-103 is amended to read as follows:

(1) This article applies to letters of credit and to certain rights and obligations arising

1 out of transactions involving letters of credit.

2 (2) The statement of a rule in this article does not by itself require, imply, or negate
3 application of the same or a different rule to a situation not provided for, or to a
4 person not specified, in this article.

5 (3) With the exception of this subsection, subsections (1) and (4) of this section, KRS
6 355.5-102(1)(i) and (j), 355.5-106(4), and 355.5-114(4), and except to the extent
7 prohibited in Section 16 of this Act~~[KRS 355.1-102(3)]~~ and 355.5-117(4), the effect
8 of this article may be varied by agreement or by a provision stated or incorporated
9 by reference in an undertaking. A term in an agreement or undertaking generally
10 excusing liability or generally limiting remedies for failure to perform obligations is
11 not sufficient to vary obligations prescribed by this article.

12 (4) Rights and obligations of an issuer to a beneficiary or a nominated person under a
13 letter of credit are independent of the existence, performance, or nonperformance of
14 a contract or arrangement out of which the letter of credit arises or which underlies
15 it, including contracts or arrangements between the issuer and the applicant and
16 between the applicant and the beneficiary.

17 Section 56. KRS 355.8-102 is amended to read as follows:

18 (1) In this article:

19 (a) "Adverse claim" means a claim that a claimant has a property interest in a
20 financial asset and that it is a violation of the rights of the claimant for another
21 person to hold, transfer, or deal with the financial asset.

22 (b) "Bearer form," as applied to a certificated security, means a form in which the
23 security is payable to the bearer of the security certificate according to its
24 terms but not by reason of an indorsement.

25 (c) "Broker" means a person defined as a broker or dealer under the federal
26 securities laws, but without excluding a bank acting in that capacity.

27 (d) "Certificated security" means a security that is represented by a certificate.

- 1 (e) "Clearing corporation" means:
- 2 1. A person that is registered as a "clearing agency" under the federal
- 3 securities laws;
- 4 2. A federal reserve bank; or
- 5 3. Any other person that provides clearance or settlement services with
- 6 respect to financial assets that would require it to register as a clearing
- 7 agency under the federal securities laws but for an exclusion or
- 8 exemption from the registration requirement, if its activities as a clearing
- 9 corporation, including promulgation of rules, are subject to regulation by
- 10 a federal or state governmental authority.
- 11 (f) "Communicate" means to:
- 12 1. Send a signed writing; or
- 13 2. Transmit information by any mechanism agreed upon by the persons
- 14 transmitting and receiving the information.
- 15 (g) "Entitlement holder" means a person identified in the records of a securities
- 16 intermediary as the person having a security entitlement against the securities
- 17 intermediary. If a person acquires a security entitlement by virtue of KRS
- 18 355.8-501(2)(b) or (c), that person is the entitlement holder.
- 19 (h) "Entitlement order" means a notification communicated to a securities
- 20 intermediary directing transfer or redemption of a financial asset to which the
- 21 entitlement holder has a security entitlement.
- 22 (i) "Financial asset," except as otherwise provided in KRS 355.8-103, means:
- 23 1. A security;
- 24 2. An obligation of a person or a share, participation, or other interest in a
- 25 person or in property or an enterprise of a person, which is, or is of a
- 26 type, dealt in or traded on financial markets, or which is recognized in
- 27 any area in which it is issued or dealt in as a medium for investment; or

3. Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) ~~(Reserved)["Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.]~~

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

1. The security certificate specifies a person entitled to the security; and
2. A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

1. A clearing corporation; or
2. A person, including a bank or broker, that in the ordinary course of its

1 business maintains securities accounts for others and is acting in that
2 capacity.

3 (o) "Security," except as otherwise provided in KRS 355.8-103, means an
4 obligation of an issuer or a share, participation, or other interest in an issuer or
5 in property or an enterprise of an issuer:

6 1. Which is represented by a security certificate in bearer or registered
7 form, or the transfer of which may be registered upon books maintained
8 for that purpose by or on behalf of the issuer;

9 2. Which is one of a class or series or by its terms is divisible into a class
10 or series of shares, participations, interests, or obligations; and

11 3. Which:

12 a. Is, or is of a type, dealt in or traded on securities exchanges or
13 securities markets; or

14 b. Is a medium for investment and by its terms expressly provides
15 that it is a security governed by this article.

16 (p) "Security certificate" means a certificate representing a security.

17 (q) "Security entitlement" means the rights and property interest of an entitlement
18 holder with respect to a financial asset specified in Part 5 of this article.

19 (r) "Uncertificated security" means a security that is not represented by a
20 certificate.

21 (2) Other definitions applying to this article and the sections in which they appear are:

22 (a) "Appropriate person," KRS 355.8-107;

23 (b) "Control," KRS 355.8-106;

24 (c) "Delivery," KRS 355.8-301;

25 (d) "Investment company security," KRS 355.8-103;

26 (e) "Issuer," KRS 355.8-201;

27 (f) "Overissue," KRS 355.8-210;

1 (g) "Protected purchaser," KRS 355.8-303;

2 (h) "Securities account," KRS 355.8-501.

3 (3) In addition, Article 1 of this chapter contains general definitions and principles of
4 construction and interpretation applicable throughout this article.

5 (4) The characterization of a person, business, or transaction for purposes of this article
6 does not determine the characterization of the person, business, or transaction for
7 purposes of any other law, regulation, or rule.

8 Section 57. KRS 355.9-102 is amended to read as follows:

9 (1) In this article:

10 (a) "Accession" means goods that are physically united with other goods in such a
11 manner that the identity of the original goods is not lost.

12 (b) 1. "Account," except as used in "account for," means a right to payment of
13 a monetary obligation, whether or not earned by performance:

14 a. For property that has been or is to be sold, leased, licensed,
15 assigned, or otherwise disposed of;

16 b. For services rendered or to be rendered;

17 c. For a policy of insurance issued or to be issued;

18 d. For a secondary obligation incurred or to be incurred;

19 e. For energy provided or to be provided;

20 f. For the use or hire of a vessel under a charter or other contract;

21 g. Arising out of the use of a credit or charge card or information
22 contained on or for use with the card; or

23 h. As winnings in a lottery or other game of chance operated or
24 sponsored by a state, governmental unit of a state, or person
25 licensed or authorized to operate the game by a state or
26 governmental unit of a state.

27 2. The term includes health-care-insurance receivables.

- 1 3. The term does not include:
 - 2 a. Rights to payment evidenced by chattel paper or an instrument;
 - 3 b. Commercial tort claims;
 - 4 c. Deposit accounts;
 - 5 d. Investment property;
 - 6 e. Letter-of-credit rights or letters of credit; or
 - 7 f. Rights to payment for money or funds advanced or sold, other than
 - 8 rights arising out of the use of a credit or charge card or
 - 9 information contained on or for use with the card.
- 10 (c) “Account debtor” means a person obligated on an account, chattel paper, or
 - 11 general intangible. The term does not include persons obligated to pay a
 - 12 negotiable instrument, even if the instrument constitutes part of chattel paper.
- 13 (d) “Accounting,” except as used in “accounting for,” means a record:
 - 14 1. Authenticated by a secured party;
 - 15 2. Indicating the aggregate unpaid secured obligations as of a date not more
 - 16 than thirty-five (35) days earlier or thirty-five (35) days later than the
 - 17 date of the record; and
 - 18 3. Identifying the components of the obligations in reasonable detail.
- 19 (e) “Agricultural lien” means an interest~~[, other than a security interest,]~~ in farm
 - 20 products:
 - 21 1. Which secures payment or performance of an obligation for:
 - 22 a. Goods or services furnished in connection with a debtor’s farming
 - 23 operation; or
 - 24 b. Rent on real property leased by a debtor in connection with its
 - 25 farming operation;
 - 26 2. Which is created by statute in favor of a person that:
 - 27 a. In the ordinary course of its business furnished goods or services to

- 1 a debtor in connection with a debtor's farming operation; or
- 2 b. Leased real property to a debtor in connection with the debtor's
- 3 farming operation; and
- 4 3. Whose effectiveness does not depend on the person's possession of the
- 5 personal property.
- 6 (f) "As-extracted collateral" means:
 - 7 1. Oil, gas, or other minerals that are subject to a security interest that:
 - 8 a. Is created by a debtor having an interest in the minerals before
 - 9 extraction; and
 - 10 b. Attaches to the minerals as extracted; or
 - 11 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas,
 - 12 or other minerals in which the debtor had an interest before extraction.
- 13 (g) "Authenticate" means:
 - 14 1. To sign; or
 - 15 2. To execute or otherwise adopt a symbol, or encrypt or similarly process
 - 16 a record in whole or in part, with the present intent of the authenticating
 - 17 person to identify the person and adopt or accept a record.
- 18 (h) "Bank" means an organization that is engaged in the business of banking. The
- 19 term includes savings banks, savings and loan associations, credit unions, and
- 20 trust companies.
- 21 (i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or
- 22 the like.
- 23 (j) "Certificate of title" means a certificate of title with respect to which a statute
- 24 provides for the security interest in question to be indicated on the certificate
- 25 as a condition or result of the security interest's obtaining priority over the
- 26 rights of a lien creditor with respect to the collateral.
- 27 (k) "Chattel paper" means a record or records that evidence both a monetary

obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:

1. Charters or other contracts involving the use or hire of a vessel; or
2. Records that evidence a right of payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

1. Proceeds to which a security interest attaches;
2. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
3. Goods that are the subject of a consignment.

(m) “Commercial tort claim” means a claim arising in tort with respect to which:

1. The claimant is an organization; or
2. The claimant is an individual and the claim:
 - a. Arose in the course of the claimant’s business or profession; and
 - b. Does not include damages arising out of personal injury to or the death of an individual.

(n) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity

1 customer.

2 (o) “Commodity contract” means a commodity futures contract, an option on a
3 commodity futures contract, a commodity option, or another contract if the
4 contract or option is:

- 5 1. Traded on or subject to the rules of a board of trade that has been
6 designated as a contract market for such a contract pursuant to federal
7 commodities laws; or
- 8 2. Traded on a foreign commodity board of trade, exchange, or market, and
9 is carried on the books of a commodity intermediary for a commodity
10 customer.

11 (p) “Commodity customer” means a person for which a commodity intermediary
12 carries a commodity contract on its books.

13 (q) “Commodity intermediary” means a person that:

- 14 1. Is registered as a futures commission merchant under federal
15 commodities law; or
- 16 2. In the ordinary course of its business provides clearance or settlement
17 services for a board of trade that has been designated as a contract
18 market pursuant to federal commodities law.

19 (r) “Communicate” means:

- 20 1. To send a written or other tangible record;
- 21 2. To transmit a record by any means agreed upon by the persons sending
22 and receiving the record; or
- 23 3. In the case of transmission of a record to or by a filing office, to transmit
24 a record by any means prescribed by filing-office rule.

25 (s) “Consignee” means a merchant to which goods are delivered in a
26 consignment.

27 (t) “Consignment” means a transaction, regardless of its form, in which a person

1 delivers goods to a merchant for the purpose of sale and:

2 1. The merchant:

3 a. Deals in goods of that kind under a name other than the name of
4 the person making delivery;

5 b. Is not an auctioneer; and

6 c. Is not generally known by its creditors to be substantially engaged
7 in selling the goods of others;

8 2. With respect to each delivery, the aggregate value of the goods is one
9 thousand dollars (\$1,000) or more at the time of delivery;

10 3. The goods are not consumer goods immediately before delivery; and

11 4. The transaction does not create a security interest that secures an
12 obligation.

13 (u) “Consignor” means a person that delivers goods to a consignee in a
14 consignment.

15 (v) “Consumer debtor” means a debtor in a consumer transaction.

16 (w) “Consumer goods” means goods that are used or bought for use primarily for
17 personal, family, or household purposes.

18 (x) “Consumer-goods transaction” means a consumer transaction in which:

19 1. An individual incurs an obligation primarily for personal, family, or
20 household purposes; and

21 2. A security interest in consumer goods secures the obligation.

22 (y) “Consumer obligor” means an obligor who is an individual and who incurred
23 the obligation as part of a transaction entered into primarily for personal,
24 family, or household purposes.

25 (z) “Consumer transaction” means a transaction in which:

26 1. An individual incurs an obligation primarily for personal, family, or
27 household purposes;

1 2. A security interest secures the obligation; and

2 3. The collateral is held or acquired primarily for personal, family, or
3 household purposes.

4 The term includes consumer-goods transactions.

5 (aa) “Continuation statement” means an amendment of a financing statement
6 which:

7 1. Identifies, by its file number, the initial financing statement to which it
8 relates; and

9 2. Indicates that it is a continuation statement for, or that it is filed to
10 continue the effectiveness of, the identified financing statement.

11 (ab) “Debtor” means:

12 1. A person having an interest, other than a security interest or other lien, in
13 the collateral, whether or not the person is an obligor;

14 2. A seller of accounts, chattel paper, payment intangibles, or promissory
15 notes; or

16 3. A consignee.

17 (ac) “Deposit account” means a demand, time, savings, passbook, or similar
18 account maintained with a bank. The term does not include investment
19 property or accounts evidenced by an instrument.

20 (ad) “Document” means a document of title or a receipt of the type described in
21 KRS 355.7-201(2).

22 (ae) “Electronic chattel paper” means chattel paper evidenced by a record or
23 records consisting of information stored in an electronic medium.

24 (af) “Encumbrance” means a right, other than an ownership interest, in real
25 property. The term includes mortgages and other liens on real property.

26 (ag) “Equipment” means goods other than inventory, farm products, or consumer
27 goods.

- 1 (ah) “Farm products” means goods, other than standing timber, with respect to
 2 which the debtor is engaged in a farming operation and which are:
- 3 1. Crops grown, growing, or to be grown, including:
 - 4 a. Crops produced on trees, vines, and bushes; and
 - 5 b. Aquatic goods produced in aquacultural operations;
 - 6 2. Livestock, born or unborn, including aquatic goods produced in
 7 aquacultural operations;
 - 8 3. Supplies used or produced in a farming operation;
 - 9 4. Products of crops or livestock in their unmanufactured states; or
 - 10 5. Equine interests, including, but not limited to, interests in horses, mares,
 11 yearlings, foals, weanlings, stallions, syndicated stallions, and stallion
 12 shares (including seasons and other rights in connection therewith),
 13 whether or not the debtor is engaged in farming operations and without
 14 regard to the use thereof. If goods are farm products, they are neither
 15 equipment nor inventory.
- 16 (ai) “Farming operation” means raising, cultivating, propagating, fattening,
 17 grazing, or any other farming, livestock, or aquacultural operation.
- 18 (aj) “File number” means the number assigned to an initial financing statement
 19 pursuant to KRS 355.9-519(1).
- 20 (ak) “Filing office” means an office designated in KRS 355.9-501 as the place to
 21 file a financing statement.
- 22 (al) “Filing-office rule” means a rule adopted pursuant to KRS 355.9-526.
- 23 (am) “Financing statement” means a record or records composed of an initial
 24 financing statement and any filed record relating to the initial financing
 25 statement.
- 26 (an) “Fixture filing” means the filing of a financing statement covering goods that
 27 are or are to become fixtures and satisfying KRS 355.9-502(1) and (2). The

term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(ao) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(ap) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(aq) (Reserved) ~~“Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.~~

(ar) “Goods” means all things that are movable when a security interest attaches.

1. The term includes:

- a. Fixtures;
- b. Standing timber that is to be cut and removed under a conveyance or contract for sale;
- c. The unborn young of animals;
- d. Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and
- e. Manufactured homes.

2. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

- a. The program is associated with the goods in such a manner that it customarily is considered part of the goods; or
- b. By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

1 3. The term does not include a computer program embedded in goods that
2 consist solely of the medium in which the program is embedded.

3 4. The term also does not include accounts, chattel paper, commercial tort
4 claims, deposit accounts, documents, general intangibles, instruments,
5 investment property, letter-of-credit rights, letters of credit, money, or
6 oil, gas, or other minerals before extraction.

7 (as) “Governmental unit” means a subdivision, agency, department, county, parish,
8 municipality, or other unit of the government of the United States, a State, or a
9 foreign country. The term includes an organization having a separate
10 corporate existence if the organization is eligible to issue debt on which
11 interest is exempt from income taxation under the laws of the United States.

12 (at) “Health-care-insurance receivable” means an interest in or claim under a
13 policy of insurance which is a right to payment of a monetary obligation for
14 health-care goods or services provided or to be provided.

15 (au) “Instrument” means a negotiable instrument or any other writing that
16 evidences a right to the payment of a monetary obligation, is not itself a
17 security agreement or lease, and is of a type that in ordinary course of business
18 is transferred by delivery with any necessary indorsement or assignment. The
19 term does not include:

- 20 1. Investment property;
- 21 2. Letters of credit; or
- 22 3. Writings that evidence a right to payment arising out of the use of a
23 credit or charge card or information contained on or for use with the
24 card.

25 (av) “Inventory” means goods, other than farm products, which:

- 26 1. Are leased by a person as lessor;
- 27 2. Are held by a person for sale or lease or to be furnished under a contract

1 of service;

2 3. Are furnished by a person under a contract of service; or

3 4. Consist of raw materials, work in process, or materials used or
4 consumed in a business.

5 (aw) "Investment property" means a security, whether certificated or uncertificated,
6 security entitlement, securities account, commodity contract, or commodity
7 account.

8 (ax) "Jurisdiction of organization," with respect to a registered organization, means
9 the jurisdiction under whose law the organization is organized.

10 (ay) "Letter-of-credit right" means a right to payment or performance under a letter
11 of credit, whether or not the beneficiary has demanded or is at the time
12 entitled to demand payment or performance. The term does not include the
13 right of a beneficiary to demand payment or performance under a letter of
14 credit.

15 (az) "Lien creditor" means:

- 16 1. A creditor that has acquired a lien on the property involved by
17 attachment, levy, or the like;
- 18 2. An assignee for benefit of creditors from the time of assignment;
- 19 3. A trustee in bankruptcy from the date of the filing of the petition; or
- 20 4. A receiver in equity from the time of appointment.

21 (ba) "Manufactured home" means a structure, transportable in one (1) or more
22 sections, which, in the traveling mode, is eight (8) body feet or more in width
23 or forty (40) body feet or more in length, or, when erected on site, is three
24 hundred twenty (320) or more square feet, and which is built on a permanent
25 chassis and designed to be used as a dwelling with or without a permanent
26 foundation when connected to the required utilities, and includes the
27 plumbing, heating, air-conditioning, and electrical systems contained therein.

1 The term includes any structure that meets all of the requirements of this
 2 paragraph except the size requirements and with respect to which the
 3 manufacturer voluntarily files a certification required by the United States
 4 Secretary of Housing and Urban Development and complies with the
 5 standards established under Title 42 of the United States Code.

6 (bb) “Manufactured-home transaction” means a secured transaction:

- 7 1. That creates a purchase-money security interest in a manufactured home,
 8 other than a manufactured home held as inventory; or
- 9 2. In which a manufactured home, other than a manufactured home held as
 10 inventory, is the primary collateral.

11 (bc) “Mortgage” means a consensual interest in real property, including fixtures,
 12 which secures payment or performance of an obligation.

13 (bd) “New debtor” means a person that becomes bound as debtor under KRS
 14 355.9-203(4) by a security agreement previously entered into by another
 15 person.

16 (be) “New value” means:

- 17 1. Money;
- 18 2. Money’s worth in property, services, or new credit; or
- 19 3. Release by a transferee of an interest in property previously transferred
 20 to the transferee.

21 The term does not include an obligation substituted for another obligation.

22 (bf) “Noncash proceeds” means proceeds other than cash proceeds.

23 (bg) “Obligor” means a person that, with respect to an obligation secured by a
 24 security interest in or an agricultural lien on the collateral:

- 25 1. Owes payment or other performance of the obligation;
- 26 2. Has provided property other than the collateral to secure payment or
 27 other performance of the obligation; or

3. Is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include issuers or nominated persons under a letter of credit.

(bh) "Original debtor," except as used in KRS 355.9-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under KRS 355.9-203(4).

(bi) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(bj) "Person related to," with respect to an individual, means:

1. The spouse of the individual;
2. A brother, brother-in-law, sister, or sister-in-law of the individual;
3. An ancestor or lineal descendant of the individual or the individual's spouse; or
4. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(bk) "Person related to," with respect to an organization, means:

1. A person directly or indirectly controlling, controlled by, or under common control with the organization;
2. An officer or director of, or a person performing similar functions with respect to, the organization;
3. An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph 1. of this paragraph;
4. The spouse of an individual described in subparagraph 1., 2., or 3. of this paragraph; or
5. An individual who is related by blood or marriage to an individual described in subparagraph 1., 2., 3., or 4. of this paragraph and shares

1 the same home with the individual.

2 (bl) "Proceeds," except as used in KRS 355.9-609(2), means the following
3 property:

- 4 1. Whatever is acquired upon the sale, lease, license, exchange, or other
5 disposition of collateral;
- 6 2. Whatever is collected on, or distributed on account of, collateral;
- 7 3. Rights arising out of collateral;
- 8 4. To the extent of the value of collateral, claims arising out of the loss,
9 nonconformity, or interference with the use of, defects or infringement
10 of rights in, or damage to, the collateral; or
- 11 5. To the extent of the value of collateral and to the extent payable to the
12 debtor or the secured party, insurance payable by reason of the loss or
13 nonconformity of, defects or infringement of rights in, or damage to, the
14 collateral.

15 (bm) "Promissory note" means an instrument that evidences a promise to pay a
16 monetary obligation, does not evidence an order to pay, and does not contain
17 an acknowledgment by a bank that the bank has received for deposit a sum of
18 money or funds.

19 (bn) "Proposal" means a record authenticated by a secured party which includes the
20 terms on which the secured party is willing to accept collateral in full or
21 partial satisfaction of the obligation it secures pursuant to KRS 355.9-620,
22 355.9-621, and 355.9-622.

23 (bo) "Public-finance transaction" means a secured transaction in connection with
24 which:

- 25 1. Debt securities are issued;
- 26 2. All or a portion of the securities issued have an initial stated maturity of
27 at least twenty (20) years; and

1 3. The debtor, obligor, secured party, account debtor or other person
 2 obligated on collateral, assignor or assignee of a secured obligation, or
 3 assignor or assignee of a security interest is a state or a governmental
 4 unit of a state.

5 (bp) “Pursuant to commitment,” with respect to an advance made or other value
 6 given by a secured party, means pursuant to the secured party’s obligation,
 7 whether or not a subsequent event of default or other event not within the
 8 secured party’s control has relieved or may relieve the secured party from its
 9 obligation.

10 (bq) “Record,” except as used in “for record,” “of record,” “record or legal title,”
 11 and “record owner,” means information that is inscribed on a tangible medium
 12 or which is stored in an electronic or other medium and is retrievable in
 13 perceivable form.

14 (br) “Registered organization” means an organization organized solely under the
 15 law of a single state or the United States and as to which the state or the
 16 United States must maintain a public record showing the organization to have
 17 been organized.

18 (bs) “Secondary obligor” means an obligor to the extent that:

- 19 1. The obligor’s obligation is secondary; or
- 20 2. The obligor has a right of recourse with respect to an obligation secured
 21 by collateral against the debtor, another obligor, or property of either.

22 (bt) “Secured party” means:

- 23 1. A person in whose favor a security interest is created or provided for
 24 under a security agreement, whether or not any obligation to be secured
 25 is outstanding;
- 26 2. A person that holds an agricultural lien;
- 27 3. A consignor;

- 1 4. A person to which accounts, chattel paper, payment intangibles, or
- 2 promissory notes have been sold;
- 3 5. A trustee, indenture trustee, agent, collateral agent, or other
- 4 representative in whose favor a security interest or agricultural lien is
- 5 created or provided for; or
- 6 6. A person that holds a security interest arising under KRS 355.2-401,
- 7 355.2-505, 355.2-711(3), 355.2A-508(5), 355.4-210, or 355.5-118.
- 8 (bu) "Security agreement" means an agreement that creates or provides for a
- 9 security interest.
- 10 (bv) "Send," in connection with a record or notification, means:
- 11 1. To deposit in the mail, deliver for transmission, or transmit by any other
- 12 usual means of communication, with postage or cost of transmission
- 13 provided for, addressed to any address reasonable under the
- 14 circumstances; or
- 15 2. To cause the record or notification to be received within the time that it
- 16 would have been received if properly sent under subparagraph 1. of this
- 17 paragraph.
- 18 (bw) "Software" means a computer program and any supporting information
- 19 provided in connection with a transaction relating to the program. The term
- 20 does not include a computer program that is included in the definition of
- 21 goods.
- 22 (bx) "State" means a state of the United States, the District of Columbia, Puerto
- 23 Rico, the United States Virgin Islands, or any territory or insular possession
- 24 subject to the jurisdiction of the United States.
- 25 (by) "Supporting obligation" means a letter-of-credit right or secondary obligation
- 26 that supports the payment or performance of an account, chattel paper, a
- 27 document, a general intangible, an instrument, or investment property.

1 (bz) “Tangible chattel paper” means chattel paper evidenced by a record or records
 2 consisting of information that is inscribed on a tangible medium.

3 (ca) “Termination statement” means an amendment of a financing statement
 4 which:

- 5 1. Identifies, by its file number, the initial financing statement to which it
 6 relates; and
- 7 2. Indicates either that it is a termination statement or that the identified
 8 financing statement is no longer effective.

9 (cb) “Transmitting utility” means a person primarily engaged in the business of:

- 10 1. Operating a railroad, subway, street railway, or trolley bus;
- 11 2. Transmitting communications electrically, electromagnetically, or by
 12 light;
- 13 3. Transmitting goods by pipeline or sewer; or
- 14 4. Transmitting or producing and transmitting electricity, steam, gas, or
 15 water.

16 (2) The following definitions in other articles apply to this article:

17 “Applicant”	KRS 355.5-102.
18 “Beneficiary”	KRS 355.5-102.
19 “Broker”	KRS 355.8-102.
20 “Certificated security”	KRS 355.8-102.
21 “Check”	KRS 355.3-104.
22 “Clearing corporation”	KRS 355.8-102.
23 “Contract for sale”	KRS 355.2-106.
24 “Customer”	KRS 355.4-104.
25 “Entitlement holder”	KRS 355.8-102.
26 “Financial asset”	KRS 355.8-102.
27 “Holder in due course”	KRS 355.3-302.

1	“Issuer” (with respect to a letter of	
2	credit or letter-of-credit right)	KRS 355.5-102.
3	“Issuer” (with respect to a security)	KRS 355.8-201.
4	“Lease”	KRS 355.2A-103.
5	“Lease agreement”	KRS 355.2A-103.
6	“Lease contract”	KRS 355.2A-103.
7	“Leasehold interest”	KRS 355.2A-103.
8	“Lessee”	KRS 355.2A-103.
9	“Lessee in ordinary course of business”	KRS 355.2A-103.
10	“Lessor”	KRS 355.2A-103.
11	“Lessor’s residual interest”	KRS 355.2A-103.
12	“Letter of credit”	KRS 355.5-102.
13	“Merchant”	KRS 355.2-104.
14	“Negotiable instrument”	KRS 355.3-104.
15	“Nominated person”	KRS 355.5-102.
16	“Note”	KRS 355.3-104.
17	“Proceeds of a letter of credit”	KRS 355.5-114.
18	“Prove”	KRS 355.3-103.
19	“Sale”	KRS 355.2-106.
20	“Securities account”	KRS 355.8-501.
21	“Securities intermediary”	KRS 355.8-102.
22	“Security”	KRS 355.8-102.
23	“Security certificate”	KRS 355.8-102.
24	“Security entitlement”	KRS 355.8-102.
25	“Uncertificated security”	KRS 355.8-102.
26	(3) Article 1 of this chapter contains general definitions and principles of construction	
27	and interpretation applicable throughout this article.	

1 Section 58. KRS 355.9-304 is amended to read as follows:

2 (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or
3 nonperfection, and the priority of a security interest in a deposit account maintained
4 with that bank.

5 (2) The following rules determine a bank's jurisdiction for purposes of this part of this
6 article:

7 (a) If an agreement between the bank and its customer~~[the debtor]~~ governing the
8 deposit account expressly provides that a particular jurisdiction is the bank's
9 jurisdiction for purposes of this part of this article, this article, or this chapter,
10 that jurisdiction is the bank's jurisdiction.

11 (b) If paragraph (a) of this subsection does not apply and an agreement between
12 the bank and its customer governing the deposit account expressly provides
13 that the agreement is governed by the law of a particular jurisdiction, that
14 jurisdiction is the bank's jurisdiction.

15 (c) If neither paragraph (a) nor paragraph (b) of this subsection applies and an
16 agreement between the bank and its customer governing the deposit account
17 expressly provides that the deposit account is maintained at an office in a
18 particular jurisdiction, that jurisdiction is the bank's jurisdiction.

19 (d) If none of the preceding paragraphs applies, the bank's jurisdiction is the
20 jurisdiction in which the office identified in an account statement as the office
21 serving the customer's account is located.

22 (e) If none of the preceding paragraphs applies, the bank's jurisdiction is the
23 jurisdiction in which the chief executive office of the bank is located.

24 Section 59. KRS 355.9-309 is amended to read as follows:

25 The following security interests are perfected when they attach:

26 (1) A purchase-money security interest in consumer goods, except as otherwise
27 provided in KRS 355.9-311(2) with respect to consumer goods that are subject to a

- 1 statute or treaty described in KRS 355.9-311(1);
- 2 (2) An assignment of accounts or payment intangibles which does not by itself or in
- 3 conjunction with other assignments to the same assignee transfer a significant part
- 4 of the assignor's outstanding accounts or payment intangibles;
- 5 (3) A sale of a payment intangible;
- 6 (4) A sale of a promissory note;
- 7 (5) A security interest created by the assignment of a health-care-insurance receivable
- 8 to the provider of the health-care goods or services;
- 9 (6) A security interest arising under KRS 355.2-401, 355.2-505, 355.2-711(3), or
- 10 355.2A-508(5), until the debtor obtains possession of the collateral;
- 11 (7) A security interest of a collecting bank arising under KRS 355.4-210;
- 12 (8) A security interest of an issuer or nominated person arising under KRS 355.5-118;
- 13 (9) A security interest arising in the delivery of a financial asset under KRS 355.9-
- 14 206(3);
- 15 (10) A security interest in investment property created by a broker or securities
- 16 intermediary;
- 17 (11) A security interest in a commodity contract or a commodity account created by a
- 18 commodity intermediary;
- 19 (12) An assignment for the benefit of all creditors of the transferor and subsequent
- 20 transfers by the assignee thereunder;~~{and}~~
- 21 (13) A security interest created by an assignment of a beneficial interest in a decedent's
- 22 estate; and
- 23 (14) A sale by an individual of an account that is a right to payment of winnings in a
- 24 lottery or other game of chance.

25 Section 60. KRS 355.9-619 is amended to read as follows:

- 26 (1) In this section, "transfer statement" means a record authenticated by a secured party
- 27 stating:

- 1 (a) That the debtor has defaulted in connection with an obligation secured by
- 2 specified collateral;
- 3 (b) That the secured party has exercised its post-default remedies with respect to
- 4 the collateral;
- 5 (c) That, by reason of the exercise, a transferee has acquired the rights of the
- 6 debtor in the collateral; and
- 7 (d) The name and mailing address of the secured party, debtor, and transferee.
- 8 (2) A transfer statement entitles the transferee to the transfer of record of all rights of
- 9 the debtor in the collateral specified in the statement in any official filing, recording,
- 10 registration, or certificate-of-title system covering the collateral. If a transfer
- 11 statement is presented with the applicable fee and request form to the official or
- 12 office responsible for maintaining the system, the official or office shall:
- 13 (a) Accept the transfer statement;
- 14 (b) Promptly amend its records to reflect the transfer; and
- 15 (c) If applicable, issue a new appropriate certificate of title in the name of the
- 16 transferee.
- 17 (3) A transfer of the record or legal title to collateral to a secured party under subsection
- 18 (2) of this section or otherwise is not of itself a disposition of collateral under this
- 19 article and does not of itself relieve the secured party of its duties under this article.
- 20 **(4) A secured party who complies with KRS 186.045(6) is considered to have**
- 21 **provided a transfer statement for purposes of this section.**

22 Section 61. KRS 355.9-706 is amended to read as follows:

- 23 (1) The filing of an initial financing statement in the office specified in KRS 355.9-501,
- 24 continues the effectiveness of a financing statement filed before July 1, 2001, if:
- 25 (a) The filing of an initial financing statement in that office would be effective to
- 26 perfect a security interest under the revision of Article 9 in 2000 Ky. Acts
- 27 ch. 408;

- 1 (b) The pre-effective-date financing statement was filed in an office in another
- 2 state or another office in this Commonwealth; and
- 3 (c) The initial financing statement satisfies subsection (3) of this section.
- 4 (2) The filing of an initial financing statement under subsection (1) of this section
- 5 continues the effectiveness of the pre-effective-date financing statement:
- 6 (a) If the initial financing statement is filed before July 1, 2001, for the period
- 7 provided in the former KRS 355.9-403 with respect to a financing statement;
- 8 and
- 9 (b) If the initial financing statement is filed on or after July 1, 2001, for the period
- 10 provided in KRS 355.9-515 with respect to an initial financing statement.
- 11 (3) To be effective for purposes of subsection (1) of this section, an initial financing
- 12 statement must:
- 13 (a) Satisfy the requirements of Part 5 of this article for an initial financing
- 14 statement;
- 15 (b) Identify the pre-effective-date financing statement by indicating the office in
- 16 which the financing statement was filed and providing the dates of filing and
- 17 file numbers, if any, of the financing statement and of the most recent
- 18 continuation statement filed with respect to the financing statement; and
- 19 (c) Indicate that the pre-effective-date financing statement remains effective.
- 20 (4) When a secured party files an initial financing statement with the Secretary of State
- 21 under subsection (1) of this section or under KRS 355.9-707, the secured party may
- 22 send a copy of the initial financing statement to the county clerk of the county in
- 23 which the pre-effective-date financing statement was filed, and, additionally, may
- 24 send to the county clerk copies of any continuation statement subsequently filed
- 25 with the Secretary of State that relates to an initial financing statement filed under
- 26 subsection (1) of this section or under KRS 355.9-707. The secured party's election
- 27 not to send a copy of an initial financing statement or a continuation statement to

the county clerk does not affect in any way the perfection of the secured party's security interest. The county clerk shall append to the pre-effective-date financing statement the copy of any initial financing statement or continuation statement received from a secured party and shall retain the entire file as required by KRS 355.9-710.

(5) KRS 355.9-506 shall apply to determine whether a financing statement filed under subsection (1) of this section satisfies the requirements of subsection (3)(a) of this section. A financing statement filed under subsection (1) of this section substantially satisfying the requirements of subsections (3)(b) and (c) of this section is effective even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

SECTION 62. A NEW SECTION OF KRS 190.090 TO 190.140 IS CREATED TO READ AS FOLLOWS:

(1) The holder of a retail installment contract shall commence an action against the retail buyer to recover monetary damages or other relief for breach of the retail installment contract within the earlier of the following:

(a) Four (4) years after the maturity date of the retail installment contract;

(b) If the motor vehicle has been repossessed, voluntarily or involuntarily, four (4) years after the date the motor vehicle was sold or otherwise disposed of by the repossessing retail seller, sales finance company, or other owner of the retail installment contract; or

(c) If the maturity date is accelerated by reason of default, regardless of whether the motor vehicle has been repossessed, within four (4) years of the accelerated maturity date.

(2) The provisions of this section shall control over any contrary provision of KRS Chapter 413.

Section 63. KRS 186A.190 is amended to read as follows:

- 1 (1) Except as provided in subsection (4) of this section and in KRS 355.9-311(4), the
2 perfection and discharge of a security interest in any property for which has been
3 issued a Kentucky certificate of title shall be by notation on the certificate of title.
4 The notation of the security interest on the certificate of title shall be in accordance
5 with this chapter and shall remain effective from the date on which the security
6 interest is noted on the certificate of title for a period of seven (7) years, or, in the
7 case of a manufactured home, for a period of thirty (30) years, or until discharged
8 under this chapter and KRS Chapter 186. The filing of a continuation statement
9 within the six (6) months preceding the expiration of the initial period of a
10 notation's effectiveness extends the expiration date for seven (7) additional years.
- 11 (2) Except as provided in subsection (4) of this section, the notation of security interests
12 relating to property required to be titled in Kentucky through the county clerk shall
13 be done in the office of the county clerk of the county in which the debtor resides. If
14 the debtor is other than a natural person, the following provisions govern the
15 determination of the county of the debtor's residence:
- 16 (a) A partnership shall be deemed a resident of the county in which its principal
17 place of business in this state is located. If the debtor does not have a place of
18 business in this state, then the debtor shall be deemed a nonresident for
19 purposes of filing in this state;
- 20 (b) A limited partnership organized under KRS Chapter 362 shall be deemed a
21 resident of the county in which its office is located, as set forth in its
22 certificate of limited partnership or most recent amendment thereto filed
23 pursuant to KRS Chapter 362. If such office is not located in this state, the
24 debtor shall be deemed a nonresident for purposes of filing in this state;
- 25 (c) A limited partnership not organized under the laws of this state and authorized
26 to do business in this state under KRS Chapter 362 shall be deemed a resident
27 of the county in which the office of its process agent is located, as set forth in

1 the designation or most recent amendment thereto filed with the Secretary of
2 State of the Commonwealth of Kentucky;

3 (d) A corporation organized under KRS Chapter 271B, 273, or 274 or a limited
4 liability company organized under KRS Chapter 275 shall be deemed a
5 resident of the county in which its registered office is located, as set forth in
6 its most recent corporate filing with the Secretary of State which officially
7 designates its current registered office;

8 (e) A corporation not organized under the laws of this state, but authorized to
9 transact or do business in this state under KRS Chapter 271B, 273, or 274, or
10 a limited liability company not organized under the laws of this state, but
11 authorized to transact business in this state under KRS Chapter 275, shall be
12 deemed a resident of the county in which its registered office is located, as set
13 forth in its most recent filing with the Secretary of State which officially
14 designates its current registered office;

15 (f) A cooperative corporation or association organized under KRS Chapter 272
16 shall be deemed a resident of the county in which its principal business is
17 transacted, as set forth in its articles of incorporation or most recent
18 amendment thereto filed with the Secretary of State of the Commonwealth of
19 Kentucky;

20 (g) A cooperative corporation organized under KRS Chapter 279 shall be deemed
21 a resident of the county in which its principal office is located, as set forth in
22 its articles of incorporation or most recent amendment thereto filed with the
23 Secretary of State of the Commonwealth of Kentucky;

24 (h) A business trust organized under KRS Chapter 386 shall be deemed a resident
25 of the county in which its principal place of business is located, as evidenced
26 by the recordation of its declaration of trust in that county pursuant to KRS
27 Chapter 386;

1 (i) A credit union organized under KRS Chapter 290 shall be deemed a resident
2 of the county in which its principal place of business is located, as set forth in
3 its articles of incorporation or most recent amendment thereto filed with the
4 Secretary of State of the Commonwealth of Kentucky; and

5 (j) Any other organization (defined in KRS 355.1-201) shall be deemed a
6 resident of the county in which its principal place of business in this state is
7 located, except that any limited partnership or corporation not organized under
8 the laws of this state and not authorized to transact or do business in this state
9 shall be deemed a nonresident for purposes of filing in this state. If the
10 organization does not have a place of business in this state, then it shall be
11 deemed a nonresident for purposes of filing in this state.

12 If the debtor does not reside in the Commonwealth, the notation of the security
13 interest shall be done in the office of the county clerk in which the property is
14 principally situated or operated. Notwithstanding the existence of any filed
15 financing statement under the provisions of KRS Chapter 355 relating to any
16 property registered or titled in Kentucky, the sole means of perfecting and
17 discharging a security interest in property for which a certificate of title is required
18 by this chapter is by notation on the property's certificate of title under the
19 provisions of this chapter or in accordance with the provisions of KRS 186.045(3).

20 In other respects the security interest is governed by the provisions of KRS Chapter
21 355.

22 (3) Except as provided in subsection (4) of this section, before ownership of property
23 subject to a lien evidenced by notation on the certificate of title may be transferred,
24 the transferor shall obtain the release of the prior liens in his name against the
25 property being transferred. Once a security interest has been noted on the owner's
26 title, a subsequent title shall not be issued by any county clerk free of the notation
27 unless the owner's title is presented to the clerk and it has been noted thereon that

1 the security interest has been discharged. If this requirement is met, information
2 relating to any security interest shown on the title as having been discharged may be
3 omitted from the title to be issued by the clerk. If information relating to the
4 discharge of a security interest is presented to a clerk under the provisions of KRS
5 186.045(3), the clerk shall discharge the security interest and remove the lien
6 information from AVIS.

7 (4) Notwithstanding subsections (1), (2), and (3) of this section, a county clerk shall,
8 following inspection of the vehicle by the sheriff, to determine that the vehicle has
9 not been stolen, issue a new title to a vehicle, clear of all prior liens, to a person
10 after he provides to the county clerk an affidavit devised by the Transportation
11 Cabinet and completed by the person. In the affidavit, the person shall attest that:

12 (a) He possesses the vehicle;

13 (b) A debt on the vehicle was owed him for more than thirty (30) days before he
14 provided the notices required by paragraphs (c) and (d) of this subsection;

15 (c) More than fourteen (14) days before presenting the affidavit to the county
16 clerk, the person attempted to notify the owner of the vehicle and all known
17 lienholders, including those noted on the title, by certified mail, return receipt
18 requested, of his name, address, and telephone number as well as his intention
19 to obtain a new title, clear of all prior liens, unless the owner or a lienholder
20 objected in writing;

21 (d) More than fourteen (14) days before presenting the affidavit to the county
22 clerk, the person had published a legal notice stating his intention to obtain
23 title to the vehicle. The legal notice appeared at least twice in a seven (7) day
24 period in a newspaper published, and with a statewide circulation, in
25 Kentucky. The legal notice stated:

26 1. The person's name, address, and telephone number;

27 2. The owner's name;

- 1 3. The names of all known lienholders, including those noted on the title;
- 2 4. The vehicle's make, model, and year; and
- 3 5. The person's intention to obtain title to the vehicle unless the owner or a
- 4 lienholder objects in writing within fourteen (14) days after the last
- 5 publication of the legal notice; and

6 (e) Neither the owner nor a lienholder has objected in writing to the person's right

7 to obtain title to the vehicle.

8 (5) No more than two (2) active security interests may be noted upon a certificate of

9 title.

10 (6) In noting a security interest upon a certificate of title, the county clerk shall ensure

11 that the certificate of title bears the lienholder's name, mailing address and zip code,

12 the date the lien was noted, the notation number, and the county in which the

13 security interest was noted. The clerk shall obtain the information required by this

14 subsection for notation upon the certificate of title from the title lien statement

15 described in KRS 186A.195 to be provided to the county clerk by the secured party.

16 (7) For all the costs incurred in the notation and discharge of a security interest on the

17 certificate of title, the county clerk shall receive the fee prescribed by KRS 64.012.

18 The fee prescribed by this subsection shall be paid at the time of submittal of the

19 title lien statement described in KRS 186A.195.

20 (8) A copy of the application, certified by the county clerk, indicating the lien will be

21 noted on the certificate of title shall be forwarded to the lienholder.

22 Section 64. The following KRS sections are repealed:

23 355.1-109 Section captions.

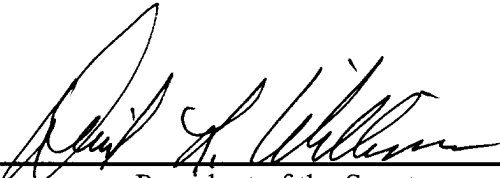
24 355.1-110 Comments of National Conference of Commissioners on Uniform State Laws

25 and American Law Institute may be consulted in construction and application of

26 chapter.

27 355.1-207 Performance or acceptance under reservation of rights.

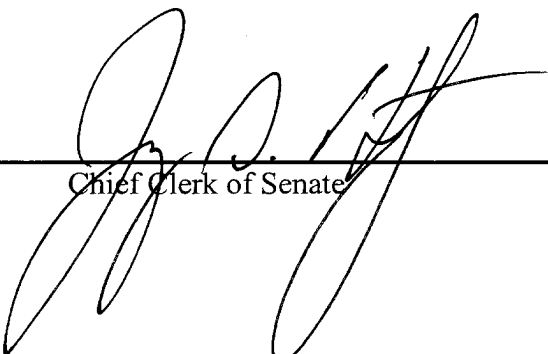
- 1 355.1-208 Option to accelerate at will.
- 2 355.1-209 Subordinated obligations.
- 3 355.2-208 Course of performance or practical construction.
- 4 355.2A-207 Course of performance or practical construction.
- 5 378.040 Conveyance or encumbrance of personal property without delivery -- Effect
- 6 prior to recording.
- 7 382.675 Recording motor vehicle liens.



President of the Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 